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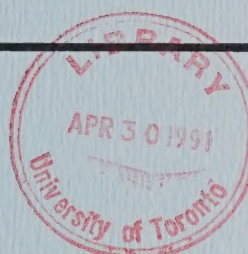
EA-87-02



ENVIRONMENTAL ASSESSMENT BOARD

VOLUME:

302



DATE: Wednesday, April 3, 1991

BEFORE:

A. KOVEN Chairman

E. MARTEL Member

FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416)963-1249

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ASSOCIATES &
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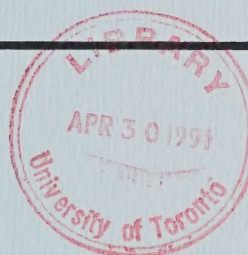
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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of a Notice by The Honourable
Jim Bradley, Minister of the Environment,
requiring the Environmental Assessment
Board to hold a hearing with respect to a
Class Environmental Assessment (No.
NR-AA-30) of an undertaking by the Ministry
of Natural Resources for the activity of
Timber Management on Crown Lands in
Ontario.

Hearing held at the offices of the Ontario
Highway Transport Board, Britannica Building,
151 Bloor Street West, 10th Floor, Toronto,
Ontario, on Wednesday, April 3, 1991,
commencing at 9:00 a.m.

VOLUME 302


BEFORE:

MRS. ANNE KOVEN
MR. ELIE MARTEL

Chairman
Member

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.	)	MINISTRY OF NATURAL
MS. C. BLASTORAH	)	RESOURCES
MS. K. MURPHY)	
MR. B. CAMPBELL)	
MS. J. SEABORN	)	MINISTRY OF ENVIRONMENT
MS. B. HARVIE)	
MR. R. TUER, Q.C.	)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN	)	ASSOCIATION and ONTARIO
MS. E. CRONK	)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY	)	ASSOCIATION
MR. H. TURKSTRA		ENVIRONMENTAL ASSESSMENT BOARD
MR. J.E. HANNA	)	ONTARIO FEDERATION
DR. T. QUINNEY	)	OF ANGLERS & HUNTERS
MR. D. HUNTER	)	NISHNAWBE-ASKI NATION
MS. N. KLEER	)	and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK	)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MS. B. SOLANDT-MAXWELL)	
MR. D. COLBORNE	)	GRAND COUNCIL TREATY #3
MS. S.V. BAIR-MUIRHEAD)	
MR. C. REID	)	ONTARIO METIS &
MR. R. REILLY	)	ABORIGINAL ASSOCIATION
MR. P. SANFORD	)	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS	)	LIMITED and SPRUCE FALLS
MR. D. WOOD)	POWER & PAPER COMPANY
MR. D. MacDONALD		ONTARIO FEDERATION OF LABOUR



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MR. B. McKERCHER)	OUTFITTERS ASSOCIATION
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MR. S.M. MAKUCH)	
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MR. D. KING		VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. H. GRAHAM		CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN		DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC		MINISTRY OF NORTHERN DEVELOPMENT & MINES
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MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
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I N D E X O F P R O C E E D I N G S

Witness: Page No.

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Continued Cross-Examination by Mr. Freidin 53663

Re-direct Examination by Ms. Swenarchuk 53809

SUBMISSIONS:

re Board ruling, re final argument 53825

I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
1789	Three-page document re MNR's staff numbers taken from the Estimates Briefing Book for 1990 to 1991.	53662
1790	Volume 1 of the Critique of Land Management Planning entitled Synthesis of the Critique of Land Management Planning by the U.S. Department of Agriculture and the Conservation Foundation dated June 1990, consisting of 24 pages.	53666
1791	Volume 11 of the Critique of Land Management Planning entitled National Forest Planned under RPA/NFMA: What Needs Fixing, dated June 1990, consisting of 66 pages.	53666
1792	Excerpts from a document entitled The Forest Service Program for Forest and Rangeland Resources: A Long-term strategic plan, consisting of seven pages.	53755
1793	Code of Federal Regulations Part 217, 36 CFR, Chapter 11, part 217 entitled Requesting Review of National Forest Plans and Project Decisions, dated July 1, 1989.	53799

1 ---Upon commencing at 9:05 a.m.

2 MADAM CHAIR: Good morning. Please be
3 seated.

4 ZANE SMITH, Resumed

5 MADAM CHAIR: Mr. Freidin?

6 MR. FREIDIN: Can I start by giving the
7 Board pages 103 to 119 of Exhibit 49 which I believe
8 was missing out of the copy that you had yester --
9 ouch.

10 MR. FREIDIN: Who stapled this?

11 MADAM CHAIR: Occupational hazard, Mr.
12 Freidin.

13 MS. SWENARCHUK: Time to quit, Mr.
14 Freidin. Let's just go home.

15 MR. FREIDIN: The blood shedding wasn't
16 supposed to be mine during this cross-examination.

17 THE WITNESS: Refreshing.

18 MR. FREIDIN: If I could just start,
19 Madam Chair. An issue arose yesterday that Ms.
20 Swenarchuk had some concern regarding the numbers in
21 Exhibit 1787 of staff for the Ministry of Natural
22 Resources. The information that we used came out of
23 the 1989 stats.

24 As a result of Ms. Swenarchuk's comment,
25 we updated the figures by referring to the Estimates

1 Briefing Book for 1990 to 1991. I would like to file a
2 three-page document. It is a covering page for that
3 document, plus pages 4 and 5 and I will just briefly
4 explain to you what the change should be in my view.

5 MADAM CHAIR: This will be Exhibit 1789.

6 MR. COSMAN: I'm sorry, I missed that
7 number.

8 MADAM CHAIR: 1789.

9 MR. COSMAN: Thank you.

10 ---EXHIBIT NO. 1789: Three-page document re MNR's
11 staff numbers taken from
12 the Estimates Briefing Book for
1990 to 1991.

13 MR. FREIDIN: You will note, Madam Chair,
14 that on Exhibit 1787 the regular probationary
15 unclassified staff is 5,604. That number, which came
16 out of '89 stat just happened to be the number reported
17 I think for March of the year which is the year in
18 which the unclassified or seasonal, you know, part-time
19 people is at its lowest.

20 If you look at page 4, you will see that
21 there is an average estimated for the unclassified
22 staff in the right-hand column, but probably most
23 helpful is page 5 which gives a month-to-month
24 breakdown of full-time versus -- or classified versus
25 unclassified and you will see that over the last four

1 or five years it has peaked somewhere over 11,000 for a
2 one month.

3 So even for the purposes of comparison,
4 if you assume that there was 10,000 total, which I
5 think is being generous, the figures are still in the
6 order of magnitude when comparing 10,000 to you to
7 62,000.

8 While you have perhaps Exhibit 1787 in
9 front of you, there is one comparison that perhaps
10 might be helpful and I will just bring that to your
11 attention through the witness.

12 CONTINUED CROSS-EXAMINATION BY MR. FREIDIN:

13 Q. Mr. Smith, in terms of area under
14 jurisdiction, do I recall your evidence correctly that
15 although the United States' forest lands total 77.3
16 million hectares, that the area within that or the
17 portion of that which is commercial timberland, which I
18 understand is timber land suitable for industrial
19 harvesting and reforestation, is 24 million hectares;
20 is that correct?

21 A. I would to look that up. It is
22 considerably less than the 77.3, but that number refers
23 not to the physical/biological character of that land
24 being suitable, but for the physical/biological and
25 decision, the purpose. So we have a lot of what you

1 would call commercial forest land inside wilderness,
2 for example.

3 Q. I see.

4 A. Or inside other designations that
5 become not available for timber harvest.

6 Q. So you gave a figure of 24 million
7 hectares during your evidence right at the outset being
8 commercial timberland.

9 So do I understand you then that as a
10 result of your forest planning exercise -- pardon me,
11 you take your total forest, some areas are designated
12 to things like wilderness, and then through a planning
13 exercise you end up with 24 million hectares being
14 identified for commercial operations?

15 A. Available for commercial operations.

16 Q. Available. Would that be the area on
17 which monies would be spent for -- what we would call
18 timber funding?

19 A. That's right, for regulated
20 commercial forest operations.

21 Q. All right.

22 MR. FREIDIN: I can advise you, Madam
23 Chair, the production forest in the area of the
24 undertaking, which you will find at MNR Panel No. 6,
25 page 48, is 26.9 million hectares.

1 One other small matter I would like to
2 bring to the Board's attention is the fact that on
3 Exhibit No. 47, which are the Fort Frances Land Use
4 Guidelines, I only raise this -- you don't have to look
5 at this, Mr. Smith, you were asked about the population
6 in the Willamette Forest area and you came up with a
7 million population, and on page 2 of the Fort Frances
8 District Land Use Guidelines it indicates that the
9 population of the Fort Frances District has been
10 relatively stable for the last two decades, so that
11 would have been through the 60's and 70's, now stand at
12 18,800 people.

13 Q. I guess it is obvious to say it is
14 considerably less than the population in the Willamette
15 Forest area?

16 A. Yes.

17 MR. FREIDIN: I would like to begin,
18 Madam Chair, by filing as the next two exhibits, Volume
19 1 and Volume 11 of the critique of land management
20 planning prepared by the United States Department of
21 Agriculture and the Conservation Foundation.

22 MADAM CHAIR: Will these be separate
23 exhibits, Mr. Freidin?

24 MR. FREIDIN: I think they should be
25 separate. Volume 1, perhaps we can mark that as the

1 first one.

2 MADAM CHAIR: Exhibit 1790 will be Volume
3 1 entitled Synthesis of the Critique of Land Management
4 Planning by the U.S. Department of Agriculture and the
5 Conservation Foundation dated June 1990 and consisting
6 of 24 pages.

7 ---EXHIBIT NO. 1790: Volume 1 of the Critique of Land
8 Management Planning entitled
9 Synthesis of the Critique of Land
10 Management Planning by the U.S.
11 Department of Agriculture and the
Conservation Foundation dated
June 1990, consisting of 24
pages.

12 MADAM CHAIR: Exhibit 1791 will be
13 volume -- is that Volume 11 or Volume 2, Mr. Freidin?

14 MR. FREIDIN: Volume 11.

15 MADAM CHAIR: Volume 11 of the Critique
16 of Land Management Planning entitled National Forest
17 Planned under RPA/NFMA: What Needs Fixing, and this
18 document is 66 pages in length.

19 ---EXHIBIT NO. 1791: Volume 11 of the Critique of Land
20 Management Planning entitled
21 National Forest Planned under
22 RPA/NFMA: What Needs Fixing,
dated June 1990, consisting of 66
pages.

23 MR. FREIDIN: Q. Can we begin, Mr.
24 Smith, by returning to 1791 which is Volume 11, page
25 37. Actually, if you would turn to page 35, I am going

1 to be dealing for a few moments here with the issue of
2 public participation and public consultation.

3 MS. SWENARCHUK: What volume?

4 MR. FREIDIN: Volume 11, Exhibit 1791.

5 MS. SWENARCHUK: Page...?

6 MR. FREIDIN: 35.

7 Q. Now, this is a report which is
8 authored by Dennis Teeguarden of the University of
9 California. Is that a person with whom you are
10 familiar?

11 A. Yes.

12 Q. And he has a section here on page 35
13 dealing with public participation and in the last
14 paragraph on the page states:

15 "The effectiveness of public
16 participation did not receive extensive
17 comment in field seminars, but it was
18 raised as an issue on five of the six
19 study forests and both by environmental
20 and industrial organizations. Several
21 problem areas emerged from the
22 discussions."

23 He lists on what they are.

24 "One is the long period required on most
25 forests to complete the planning and

1 public participation process."

2 We have discussed that.

3 The next paragraph refers to complexity
4 of plan documentation. I think we have touched on
5 that.

6 The next paragraph refers to a third
7 fundamental issue concerning the structure of the
8 public participation and decision-making process and we
9 have touched on that, and I think that's what I want to
10 discuss with you briefly.

11 Then there is reference in the next
12 paragraph to an analysis of this issue being prepared
13 by Julie Wondolleck in what's described as a recent
14 seminar study of national forest disputes, and that she
15 inherent three methodologies that undermine the
16 effectiveness of forest planning including the public
17 participation element. They are identified as:

18 (1) the process is not sufficiently
19 informative or convincing;

20 (2) the process is devisive; and (3) the
21 process is not decisive.

22 Now, that was her conclusion and she goes
23 on and she suggests that one way to improve matters, if
24 you look at page 37 in the very first full paragraph,
25 she recommends an alternative approach to public

1 participation that would supplement "more traditional
2 review and analysis procedure with more direct
3 collaborative efforts involving concerned forest
4 users."

5 I think you agree with the approach which
6 has been recommended and suggested by Ms. Wondolleck;
7 is that correct?

8 A. I have not read her recommendations
9 or report or analysis, but I agree with that principle
10 that collaborative participation by the public is
11 superior to simply review and comment.

12 Q. Okay. Now, could you turn back to
13 page 21 of Volume 2. I think you better have all of
14 these out because I am going to be flipping back and
15 forth. So Volume 2 is Exhibit 1772.

16 MADAM CHAIR: Which page?

17 MR. FREIDIN: I will be referring to page
18 21.

19 Q. So you have all three of them in
20 front of you now, Mr. Smith?

21 A. I do now. Page 21?

22 Q. Page 21. In the Conservation
23 Foundation report they have a section that begins on
24 page 21 entitled Citizens' Committees Can Be Helpful
25 and the comment by -- the comment in the second

1 paragraph comments that -- and I am just going along
2 from Wondelleck saying public participation and I am
3 going back to Volume 2 where now the Conservation
4 Foundation are looking at Citizens' Committees. They
5 say:

6 "Perhaps the best (and longest standing)
7 model of an advisory committee in action
8 is the ad hoc advisory committee that
9 works with the White Mountain National
10 Forest in New Hampshire."

11 They give a little bit of history and in
12 the fifth line on page 22 they say:

13 "Today it numbers about 15 people broadly
14 representative of forestry interests in
15 New Hampshire and functions 'primarily
16 as the communication mechanism.'"

17 The next paragraph:

18 "When an issue emerges, a small group may
19 form within the committee and add other
20 individuals to address it, often under
21 the aegis of an elected official."

22 And then going down to the next
23 paragraph, this is the point I want to discuss with
24 you:

25 "While recognizing that some formalized

1 process might be desirable, it should be
2 kept flexible and responsive. There was
3 concern that a tightly structured
4 advisory committee might be too static
5 and rigid."

6 In Exhibit 1278B, which is the Ministry
7 of Natural Resources' covering letter to its terms and
8 conditions and to a summary report of its draft terms
9 and conditions. On page 3, it said there was an
10 outstanding; there was something being dealt with
11 between the parties which wasn't finally addressed in
12 the draft terms and conditions and it was identified as
13 outstanding.

14 The issue which was outstanding, one of
15 them was whether the terms and conditions dealing with
16 the timber management stakeholders' committee, this is
17 this committee of citizens which is being proposed for
18 each forest management unit, are overly detailed given
19 the need for such committees to be able to structure
20 their procedures in a way that suits them best.

21 The letter, again, a concern raised in
22 the material being provided by the Ministry of Natural
23 Resources, in Exhibit 1278C, which is the summary
24 report, says that:

25 "MNR is concerned that the proposed terms

1 and conditions with the timber management
2 stakeholders' committee may be overly
3 detailed. A few basic rules are
4 recommended. However, procedural rules
5 should be developed by the committee
6 itself. Rules of general application on
7 such things as physical attendance at
8 comittee meetings, frequency of
9 meetings, preparation and distribution of
10 minutes may not make sense in particular
11 local circumstances. The committee
12 should have the ability to structure
13 their procedures in a way that suits them
14 best and we would like to explore this
15 matter further with other parties."

16 I bring this to your attention because I
17 would like to have your assistance or your views based
18 on your experience whether you think that is a good
19 idea, that there should be maybe a formalized
20 stakeholders' committee and that you agree with the
21 suggestion in Volume 2 that it should be kept flexible
22 and the concerns that MNR has indicated are valid ones.

23 MS. SWENARCHUK: Madam Chair, I must
24 object to this question. Mr. Smith has not been
25 requested by us to review the terms and conditions for

1 all parties and to look at various proposals with
2 regard to, in this case, advisory committee that have
3 been drawn up.

4 My suggestion is that he is really being
5 placed in an unfair position in being asked to comment
6 on the Ministry's views of some parties' proposal which
7 he has not seen, and I suggest that his opinion on that
8 kind of question can't be of much assistance to the
9 Board because he is not aware of the range in views,
10 particular proposals and the divergences of them.

11 MR. FREIDIN: I can certainly restructure
12 the question. I only referred to the source of my
13 question just to bring it to the attention of the
14 Board. I will just ask the question.

15 Q. Do you agree with the comment made in
16 Volume 2 that while recognizing that some formalized
17 process might be desirable for citizens' committees, it
18 should be kept flexible and responsive and that -- all
19 right. First of all, do you agree with that?

20 A. I agree if one is to use a citizens'
21 committee, I believe the best utility would be to keep
22 it flexible.

23 The American Forestry Association
24 sponsors so-called Friends of the National Forest
25 Committees around the country for various nation

1 forests and the premise is that these committees sort
2 of initiate themselves and develop their own protocols.

3 What really counts is the agency's
4 willingness to listen to these committees and let them
5 advise, let them participate. The commitment of the
6 agency official is all key. I would say that the
7 committee has to be in the context of a broader public
8 involvement program.

9 Q. Do you agree with the general
10 proposition that the procedures and the protocol might
11 vary for particular local circumstances, and in that
12 situation it makes sense to leave to the committees the
13 ability to structure their procedures in a way that
14 suits them best?

15 A. I favour letting the committees
16 themselves have quite a lot of latitude. Again, I
17 don't believe that the committees should be the sole
18 source--

19 Q. Oh, no.

20 A. --of public involvement. If one is
21 to have a committee, I think they should be allowed to
22 run it pretty much like they should.

23 Now, The White Mountain, which was
24 referenced here, was held up as a model of committee
25 interaction with the Forest Service. However, it

1 didn't preclude appeals of the forest plan. In fact,
2 there was an anticipation that perhaps this committee
3 could eliminate appeals, but it did not.

4 People, as I mentioned earlier, who felt
5 like they were on the outside of that committee for one
6 reason or another raised their hand and challenged the
7 decision.

8 Q. Okay. Could you turn to Exhibit 1781
9 which is the February 15, 1901 proposed regulations.
10 You should keep that document in front of you, too,
11 because I will be jumping to that one a fair bit as
12 well. Page 6521.

13 Yesterday in relation to the subject of
14 public consultation we were discussing whether
15 initially in a planning process one should provide
16 something for the public to respond to; not decisions,
17 but something to respond to or start with a clean
18 slate?

19 A. Yes.

20 Q. You gave your evidence on that.
21 There is comment by the Forest Service in the proposed
22 regulations and in their commentary on page 6521. On
23 the right hand-column, going down to the second full
24 paragraph, it begins: "One distinct change..."

25 A. Yes.

1 Q. If you go down another six or seven
2 lines, it says:

3 "Another distinct change reflected in
4 paragraph (c)(1) is that the Forest
5 Supervisor would tentatively identify the
6 areas of needed change, with review and
7 concurrence by the Regional Forester."
8 They are talking here about forest plan
9 revisions.

10 "It is after this tentative
11 identification that the public
12 involvement process is initiated to
13 verify the accuracy of their assessment.
14 In the existing regulation, revision is
15 initiated by involving the public in the
16 identification of issues. Although this
17 was a logical starting point for the
18 development of initial forest plans, the
19 revision process will have the benefit of
20 several years of on-going communication
21 with the public relating to project
22 decisionmaking and monitoring and
23 evaluation."

24 They go on on the next page, if you go
25 down to the third full paragraph in the left-hand

1 column on page 6522, go down about -- the second line:

2 "Under the provisions of paragraph
3 (c)(1), there is better opportunity for
4 more meaningful public involvement and
5 comment. Although at first glance it
6 might appear that the 'up front' efforts
7 are counter to the concept of early
8 and on-going public involvement, in
9 reality these 'up front' efforts should
10 greatly help this public involvement
11 concept become a reality. By providing
12 the public with the results of the
13 Regional Forester's initial evaluation
14 regarding 'need for change', anticipated
15 alternatives, and anticipated analysis
16 procedures, the public is provided with
17 substantive, comprehensive information
18 upon which to base their comments. The
19 approach should promote a more focused
20 means for the public to respond while
21 simultaneously expanding their scope to a
22 broader perspective of the
23 overall revision process."

24 Now, it seems that the Forest Service in
25 the context of plan revision believe that there may be

1 some advantage to providing the information sort of
2 upfront for the public to respond to. I'm not
3 suggesting -- they are not saying make the decisions,
4 but give them something to indicate what the Forest
5 Service thinking is as the initial stage.

6 It was this comment that made me ask you
7 the question yesterday. I am wondering whether having
8 seen this affects your views at all?

9 A. I don't consider that inconsistent
10 with what we were discussing yesterday. We were
11 discussing initial public involvement in the initial or
12 original comprehensive and integrated plan.

13 We are now talking about an incremental
14 approach to planning in the revision of a document such
15 as we looked at in Willamette. It makes sense to me
16 that the need for change -- by the way, I kind of
17 endorse that concept. There is no point in going back
18 to ground zero because we have a fairly, you know,
19 decent product from the initial approach.

20 We identify needs for change and those
21 needs for change are accumulated over a period of
22 experience and they become kind of a matter of fact.
23 They are not something that is developed out of theory
24 or speculation or assumption. They are developed as
25 part of the monitoring of the plan, a discovery that

1 things need to be changed or altered or, you know, data
2 is accumulated.

3 The public has been a part of that right
4 along. So I don't see it as the agency suddenly
5 creating something and then asking for public reaction.
6 I see it as an accumulation of facts and things that
7 have happened that have been sort of fully disclosed
8 along the way and starting from that point. That to me
9 makes sense. I intend to agree with this approach.

10 Q. Okay. Now, these comments are made
11 in the context of land use planning. Once you get down
12 to a project level type of planning where the issue
13 really is, how are we actually going to do it on the
14 ground which involves to a greater extent the input, as
15 I think you indicated in your evidence, of the
16 individuals who are charge with the actual delivery.

17 When you are down at that level, do you
18 have any view as to whether there is a difference, that
19 perhaps at that level where you are dealing with the
20 on-the-ground delivery that perhaps there is a
21 reason -- perhaps more of a reason to lean the other
22 way to say: We should give the public some idea of
23 what is being planned to actually happen on the ground
24 to implement this as opposed to starting from a clean
25 slate?

1 A. I feel it's somewhat a matter of
2 degree. The agency is going to provide more thinking
3 and tentative decisions and idea and notions, but I
4 think in my experience it has been valuable to do some
5 scoping with the public, whether it is implementing a
6 timber harvest or a road project that emanates out of
7 an integrated plan, such as the Willamette, it would be
8 far better to have the public involved initially in
9 sensing what are the possible issues relating to a
10 timber sale that perhaps could have an affect on a
11 trail or an outfitter guide or, you know, a resort on a
12 lake or whatever, maybe an organization camp for boy
13 scouts.

14 I think it is far better to involve the
15 public at that point to find out if there are any
16 issues, any information that should be plowed into that
17 design. Then I would proceed, you know, and start
18 designing that in the usual way and expose that work
19 back to that public.

20 Q. Okay, thank you.

21 MR. MARTEL: Mr. Smith, is it your
22 perception that all of these plans or any other host of
23 plans that are involved in committees, that really what
24 seems to be lacking, built up over a number of years,
25 is a mistrust of the agency that the voluntary groups

1 are working with?

2 That, in fact, most of those groups feel
3 someone is trying to take them to the cleaners and
4 developing little mechanisms for doing it and the real
5 thing that is lacking is a sense of trust that when
6 someone brings forward a concern that it is dealt with
7 in a sensitive and positive way, and that hasn't
8 been --- and that's been the step that's been missing
9 all along?

10 THE WITNESS: I think that's certainly
11 the case in the U.S. The Forest Service has, you know,
12 on the surface listened to people, collected ideas and
13 gave the appearance of proceeding, business as usual,
14 and that undermined the confidence level.

15 The Forest Service is having a bit
16 catch-up job to do. I think they are doing it and they
17 are actually changing because the sociopolitical
18 environment has allowed the Forest Service to back off
19 of some of the business as usual activities.

20 So I think, you know, if you had to graph
21 that, I think the confidence level is coming up, but it
22 has been down here where you've described it for very
23 good reasons.

24 Once a decision was made to make a timber
25 sale we made it and we made it pretty much the way we

1 always made it. We didn't have a whole lot of sense of
2 place when that happens. The areas designated for
3 commercial timber purposes, the timber sale design
4 people went out and laid out a timber sale and the road
5 system to access that and it didn't make much
6 difference whether there was a good fishing hole there
7 or a nice vista or a community of important plants and
8 animals or the presence of wilderness or a resort or a
9 ski area. They just kind out went their merry way.

10 MR. MARTEL: You see, that's what still
11 worries me. I think I asked you the first day you were
12 giving direct evidence how much influence the public
13 really has.

14 I mean, could they block a timber sale
15 without -- forgetting the appeal mechanisms, forgetting
16 trying to take it to court, how much influence do the
17 people who participate really have?

18 Is it still a little more sophisticated
19 than was previous, do you responds to it, or can they
20 really make fundamental change? In other words, can
21 they help you to decide how much you are going to cut
22 or where you are going to cut, or is there still pretty
23 tacit agreement that is already there, given or take a
24 little here or there?

25 I mean, the problems are similar here in

1 Ontario to what you obviously had in the States. I
2 mean, we have heard all kinds of witnesses at this
3 hearing so far about you can't -- really what they are
4 saying is you can't fight City Hall.

5 THE WITNESS: I think we have had that as
6 a historical description. Certainly that's the way a
7 lot of people would describe where the Forest Service
8 has been vis-a-vis public advice and counsel.

9 I really honestly believe that the Forest
10 Service has emerged out of that to where you can point
11 to almost any national forest now and they can give you
12 a list of examples as long as your arm where the people
13 had come in and said: We don't like this, we'd like
14 you to do something else and, in fact, the Forest
15 Service has done it.

16 Now, I would have a hard time separating
17 that from the -- you know, the fact that we've had a
18 history of being stopped in the courts and appeals,
19 that perhaps was like a necessary -- like hitting
20 somebody on the head with a 2x4 to get their attention.
21 You know, this is serious, this is real, the public
22 owns these lands, they are going to get what they want.

23 So as a result of this, the Forest
24 Service is responding today to people's desires and
25 they are changing things. They are, you know,

1 eliminating clearcuts or they're dropping units and
2 they are relocating roads and doing that sort of thing,
3 but it has been a period of time, that probably the
4 incentive has been getting the attention first.

5 MR. MARTEL: See, MNR used to have some
6 advisory committees and they wiped them out in about
7 '77 or '78 in each area where they had them and those
8 committees disappeared.

9 It might be before Mr. Freidin's time,
10 but not before mine. They wiped them out and the input
11 from the public virtually disappeared in around '77,
12 '78 and died for a long period of time.

13 I guess what my colleague and I are
14 trying to grapple with is, how do you make these
15 committees work, responsive with all of the
16 complexities and really I am not seeing much difference
17 in your situation and what we are moving to.

18 THE WITNESS: I see lot of similarity.
19 You know, I have some empathy for the MNR trying to
20 effect change, doing it during a period of social
21 change, different ideas coming from people.

22 The Forest Service in the United States
23 was further burdened by pretty tough targets set by the
24 Congress and a district ranger, the people out in the
25 field were sort of between a rock and a hard place.

1 They wanted to respond to public comment, but they
2 still had to get the timber cut out. I think that has
3 moderated greatly. There is more recognition with, you
4 know, we can't have our cake and eat it too here. Our
5 targets are being set with a little more realistic view
6 of what the people want.

7 MR. FREIDIN: Q. I think you indicated
8 in your evidence that you felt that there was a
9 building of trust between the Forest Service and the
10 public in the United States over a number of years,
11 perhaps through this entire planning process?

12 A. I feel the level of trust is much
13 higher now than it was before we started this process.

14 Q. How many years have you been involved
15 with this new process that was instituted over which
16 this trust has been increasing?

17 A. Well, I really think it started
18 before, you know, we started this generation of
19 planning for the Willamette. I think the evolutionary
20 process began probably with what we have called Earth
21 Day in 1970.

22 We began to discover that there was a
23 different set of values and priorities that we had to
24 start managing for in a more positive way and began to
25 set targets and recognized that there are objectives

1 for some of these other values, and then the system
2 began to catch up with that through appropriations,
3 budgets and that sort of thing.

4 Q. Okay. Could you turn to Exhibit 1791
5 which is Volume No. 11, at page 11. I want to --
6 again, the title of this particular document is What
7 Needs Fixing. I want to refer you to a couple of
8 portions of this document that indicate what is a few
9 things that needs fixing and then I want to explore how
10 the Forest Service is suggesting that they actually be
11 fixed.

12 So the spring board for that conversation
13 starts on page 11, and if we look under the heading
14 Forest Plans, and again we are talking here about land
15 use plans. If we go down three paragraphs:

16 "The forest plans are legal documents
17 designed to meet the requirements of..."
18 statutes which are referred to there.

19 "Their legal sufficiency is
20 understandably a major concern to
21 planners and the responsible supervisor.
22 As a result, the forest plans have become
23 voluminous technical documents to the
24 extent that they may not be readily
25 understood by the general public."

1 I take it that's a criticism that you are
2 aware of?

3 A. Yes. I believe that, again, these
4 later plans are more understandable. They are
5 obviously very thick.

6 Q. Right.

7 A. But if you look at the Willamette
8 plan and the accompanying maps, I think most of the
9 public I have talked to, and I have talked to a lot of
10 them in the Oregon area, they kind of like what came
11 out of this as far as understandability and a lot of it
12 deals with these maps that they go right to the
13 specific spot on the ground, look at the code there, go
14 back to the plan and find out exactly what the Forest
15 Service had in mind. So it has been an evolutionary
16 thing.

17 Q. Let's go down to the next paragraph.
18 About six lines or seven lines down it says:

19 "For a technically experienced reader,
20 reviewing a document of this size and
21 technical sophistication is an
22 intimidating prospect, but not
23 impossible. A lay reader, on the other
24 hand, may be so daunted as to not
25 undertake the task. But given the

1 documentation requirements of the law
2 and the prospect of legal actions, this
3 situation must be accepted as one of the
4 inherent, if unfortunate, features of
5 forest planning today."

6 If you go over the page:

7 "There is a related, even more serious,
8 problem: Even though much information is
9 presented, the forest plans are basically
10 opaque. It is difficult, if not
11 impossible, for a reader to trace the
12 decisions reported to underlying
13 analysis, assumptions, key relationships,
14 marginal tradeoffs and values, and
15 decision criteria. As a result, the
16 preferred alternative, record of
17 decision, mix of silvicultural practices,
18 and many other details seem to emerge
19 from a sort of black box."

20 Notwithstanding your view that things
21 have improved, and I accept that things have improved,
22 it seems to be a matter of fact that the review -- the
23 critique of land management planning nonetheless in
24 1990 have reported that this concern about detailed
25 technical documents, difficulty of tracing things is

1 still there, it's not solved yet?

2 A. I think that's a fair statement,
3 although, again, I think the latter plans have
4 demonstrated that that can be overcome. I don't
5 believe it's necessary to be opaque and to be, you
6 know, overwhelming. There are things the Forest
7 Service can do to provide the lay person the
8 opportunity to get what he or she may want out of the
9 plan.

10 The Willamette plant when it was issued
11 not too long ago actually conducted a whole series of
12 workshops and briefings and, you know, almost provided
13 guides to go through it. They also provided - and I
14 don't know if we have it here - they provided a little
15 layman's guide to how to deal with it. So one could go
16 steps 1, 2 and 3 and if they had an interest in a
17 particular area or a particular concern they could
18 track it back through.

19 Q. I want to explore with you what
20 appears to me to be some of the initiatives that are
21 being recommended both by the Forest Service in their
22 proposed regulations and also by the Conservation
23 Foundation which I believe are responsive to this kind
24 of concern.

25 For that purpose, could you turn please

1 to Volume No. 2, Exhibit No. 1772, page 31. One of the
2 issue which has been raised at the hearing revolves
3 around economic analysis, net present value
4 calculations and that sort of thing.

5 The other day Madam Chair was asking you
6 about putting dollar values on all the non-timber
7 values. You made a number of comments. You said, we
8 don't even quantify some non-timber values, you
9 indicate economists are telling us not to try and
10 quantify things like these and there was a list of
11 items in the Willamette plan. It was actually Exhibit
12 1754, page 69 to 70.

13 Then in response to a question that she
14 asked about putting dollar values on all of these
15 non-timber values you said: We haven't run into
16 problems with this, and it was that comment that gives
17 rise to the question I am going to ask now and that's
18 why I have referred you to page 31.

19 If you look under the heading NFMA
20 Regulations Should be Substantially Reduce, it states:

21 "Ironically, the difficulties local
22 managers have had in applying this legal
23 framework to the situations on individual
24 national forests may stem from too much
25 guidance rather than too little."

1 If we jump down below the boxed-off
2 portion, it says:

3 "The complexity of the current
4 regulations and their emphasis on
5 economic efficiency set a tone and
6 direction that is not well suited to
7 every local situation."

8 It we go down four for five lines on the
9 right-hand side:

10 "The approach that was ultimately taken
11 was highly technical and analytical, and
12 was strongly oriented with economic
13 efficiency as a very decision criterion.
14 Forest planners were required to
15 conduct 'benchmark analysis' to determine
16 the 'present net value' at a level of
17 management that was little more than
18 custodial and at a level that would push
19 the forest to its physical and biological
20 limits...."

21 "A third benchmark analysis was required
22 to depict whatever management regime
23 would 'maximize present net value..."

24 "To perform this analysis, assumptions
25 had to be made regarding the production

1 and value of resources not commonly
2 thought of in economic terms; wilderness
3 and other undeveloped recreation,
4 wildlife and fish, and water all needed
5 some sort of price assigned to them so
6 that their values could be weighed
7 against those of timber, livestock,
8 grazing and minerals."

9 If we go down to the next paragraph it
10 says:

11 "This approach worked against effective
12 planning in several ways..." and they
13 list them in that paragraph.

14 Going down to the second full paragraph
15 on page 32 it says:

16 "Current experience indicates that, at
17 the local level..." and I take it this
18 is talking about land use planning at the forest level?

19 A. Yes.

20 Q. "...economic efficiency analysis has
21 not turned out to be a compelling
22 decisionmaking tool. Such analysis
23 is simply of limited usefulness in
24 imputing social values. In practice,
25 many Forest Service decisionmakers

1 eventually distanced themselves from
2 these economic efficiency analyses
3 and based their decisions more on what
4 they heard from individuals and
5 organizations than on an interest in the
6 management of the national forests.

7 In effect, they returned to a more
8 qualitative way of determining how they
9 could best meet society's needs."

10 Next paragraph:

11 "There were a few forests in which the
12 planners took the second approach without
13 having down through the required
14 economic analysis beforehand, most
15 notably the Green Mountain National
16 Forest in Vermont. Generally, the result
17 has been far less polarization of
18 the interests, fewer subsequent legal
19 challenges, and plans that nearly all
20 segments of the public find worthy of
21 support. It has been pointed out that,
22 had the Green Mountain and similar plans
23 been challenged on their legal adequacy
24 under the regulations, they would have
25 been found wanting. The fact is,

1 however, they were, for the most part,
2 not challenged. They work. And many
3 other plans that come closer to the
4 letter of the regulations do not. If the
5 Green Mountain and similarly successful
6 plans are out of step with the
7 regulations, then perhaps the regulations
8 - not the plans - should be changed."

9 Now, I am going to discuss with you how
10 the proposed regulations address this, but before I do,
11 do you agree with this independent assessment regarding
12 the role of economic efficiency and associated tools --
13 or the role that economic efficiency and associated
14 tools have played in forest planning and how it should
15 be changed?

16 A: I again tend to agree with that
17 analysis or observations in kind of a general way. I
18 think it was more pronounced at the beginning of the
19 planning period than it was towards the end.

20 I also agree that such things as FORPLAN
21 and economic analysis really had more importance where
22 there were large quantifiable programs that you could
23 manipulate at different levels and understand what the
24 dollar values were, present net worth was.

25 The Green Mountain is an example of a

1 forest that I don't think really needed it. The Green
2 Mountain cuts very low commercial timber, it's primary
3 value in the New England portion of the United States
4 is public lands, naturalness, undeveloped lands,
5 recreation, that sort of thing. It really doesn't lend
6 itself too well to that.

7 On the other hand, the Willamette has a
8 very substantial timber program. I think FORPLAN and
9 economic analysis were of much more value there, but
10 not necessarily the sole tool to determine that.

11 My experience in California as a regional
12 forester reviewing a variety of plans from the
13 Cleveland National Forest on the Mexican border, that
14 was essentially recreation and watershed, all the way
15 to Calamith in Northern California, which is a very
16 heavy timber producer, I didn't find myself as a
17 decision-maker having a whole lot of trouble with that.

18 I suppose I could have been accused of
19 the same thing. You know, perhaps placing a lot of
20 subjective value on qualitative public assessments, at
21 the same time looking at the hard data of economic
22 assessment.

23 I think those things have to be in
24 balance and it depends on the forest property. If
25 there are a lot of real heavy quantifiable dollar

1 things, then we ought to look at those, not ignore
2 them. But look at them in the context of all the other
3 values that can't be quantified in dollars and cents.

4 So I agree with all of this, but it's not
5 a black and white issue and it varies greatly from
6 location to location.

7 Q. All right. In that regard, can you
8 turn to the proposed regulations, Exhibit 1781, at page
9 6522. I think you will agree with the general comment
10 here by the Forest Service. Let's see. In the middle
11 paragraph on page 65 -- the middle column, sorry, 6522,
12 the first full paragraph says:

13 Paragraph (d) would provide the Regional
14 Forester with the discretion to determine
15 the level and type of analysis needed
16 to adequately disclose trade-offs and
17 make an informed decision. It would
18 identify the need for environmental,
19 economic and social analysis and would
20 direct that such analysis be commensurate
21 with the data available and decisions
22 being made. Allowed procedures are
23 limited to only generally accepted
24 analysis and evaluation methods. The
25 provisions of paragraph (d) introduce a

1 noteworthy change from the existing
2 regulation. The intent is to allow
3 analytical efforts to be focused on the
4 critical questions raised by forest plan
5 revision rather than dispersed across a
6 wide range of standardized analytical
7 requirements which may not be relevant to
8 local conditions and concerns."

9 Do you agree generally with what I think
10 is the thrust of this message and that is, there should
11 be a move away from standardized analytical
12 requirements which should be done everywhere all the
13 time, move away from that and rather you should leave
14 it to people like, in this case, the regional forester
15 to determine what efforts are really necessary to deal
16 with the specific issues and the specific location?

17 A. I agree with what's said here. As a
18 matter of fact, that's what happened towards the end of
19 the planning period. Regional foresters and even
20 forest supervisors were adapting to the requirements
21 according to the local situation. So yes, I agree
22 this.

23 I don't think every regional forester
24 should bring down his own or her own standards
25 necessarily, but, as they say, within a reasonable

1 framework of standards, yes.

2 Q. Okay. Let's go over to the
3 right-hand column of the same page, the very first full
4 paragraph, additional commentary explaining the purpose
5 for this proposed amendment. It says:

6 "The flexibility provided by paragraph
7 (d) is also intended to enhance an
8 overall understanding and confidence
9 level in analytical procedures. Findings
10 of the Critique of Land Management
11 planning clearly indicate that many
12 people, both internally and externally,
13 distrust analytical procedures and view
14 computer models as mysterious 'block
15 boxes' which produced incomprehensive and
16 Unverifiable answers. This has occurred
17 in part because of rigorous, standardized
18 analytical requirements which demand
19 creation of complex computer models."
20 Again, do you agree with that general
21 observation?

22 A. I agree with that. Again, I don't
23 think the Forest Service ought to throw the baby out
24 with the bath water. Part of this problem was
25 generated by the Forest Service itself by simply not

1 representing the data and the black box information
2 correctly within the context of decision-making, but
3 this is what was perceived I think both internally and
4 externally.

5 Q. Just to be fair to you, if we go down
6 to the next paragraph, it says:

7 "Although paragraph (d) would provide
8 enhanced flexibility to tailor analysis
9 to meet local needs, this should not be
10 interpreted as de-emphasizing the
11 importance of sound analysis nor to imply
12 that less analysis will occur."

13 I want to be fair to you. I think this
14 accurately reflects I think your view?

15 A. Yes.

16 Q. Thank you. Could you turn to the
17 record of decision for the Willamette plan, Exhibit
18 1754B, please, page 25. Do you have that?

19 A. Yes.

20 Q. I just want to confirm in terms of
21 this discussion of economic analysis, if we go to the
22 first paragraph where they are talking about present
23 net values and go down to the second last line of that
24 paragraph.

25 A. Yes.

1 Q. "Since present net value does not
2 reflect the value of these benefits..."
3 and they are referring to the ones in the previous
4 sentence,

5 "...nor the costs associated with
6 negative effects on them, it was not the
7 only criterion I used in selecting the
8 preferred alternative."

9 So I guess, No. 1, that indicates that
10 the present net value wasn't the sole criterion in this
11 plan, and you agree that present net value should not
12 be the sole criterion for the purposes of making any
13 decision? The sole criterion.

14 A. The sole criterion for decision on a
15 forest plan, yes.

16 Q. Okay. Could we also confirm the next
17 sentence, it says:

18 "The preferred alternative has a present
19 net value of 858-million and that the
20 following three alternatives have a
21 higher present net value."

22 That just indicates that the preferred
23 alternative, the alternative that was actually
24 reflected and implemented in your forest plan is not
25 the one which had the highest present net value?

1 A. That's true.

2 Q. So there is no requirement that you
3 have to take the option or the alternative that has the
4 highest present net value?

5 A. I would be surprised if any
6 alternative were selected on any forest that was the
7 highest present net value.

8 Q. All right.

9 A. There could be some.

10 Q. Other comment that I found
11 elucidating was at the very bottom where it says under
12 the second last line:

13 "Base on the preceding discussion, it is
14 clear that the Alternative W..." which I
15 understand is the preferred one,

16 "...does not have the least impact on the
17 environment, nor does it generate as many
18 market value commodities as other
19 alternatives considered in the final
20 environmental impact statement."

21 Again, there is the comment that the
22 alternative which was chosen does not have the least
23 impact on the environment. What does that mean to you
24 and is that -- why does that happen in some cases?

25 A. Well, I think to pick the alternative

1 with the least impact on the environment you do
2 nothing, you go back to a custodial stage. So I doubt
3 that any forest picked the least environmental impact
4 alternative.

5 It means to me that national forests are
6 by statute designated to provide a range of goods and
7 services and in order to do that there is going to be
8 some effect on the environment. That effect will
9 always be, we hope, it is our intent, will be within
10 the framework of sustainable use and the retention of
11 basic biodiversity. There is going to be an effect on
12 biodiversity and every other aspect if one produces
13 goods and services.

14 Q. I read that. There is no question
15 that the preferred alternative would have more impact
16 on the environment in terms of impacts of man
17 activities than doing nothing?

18 A. Yes.

19 Q. But is it not possible that
20 Alternative W which was preferred perhaps had more
21 impact on the environment than one of the other
22 alternatives which was discussed other than the null
23 alternatives?

24 A. Sure. I think it's fair to say there
25 is a continuum of high intensity management on one hand

1 and do nothing on the other and, you know, Alternative
2 W is somewhere between and there probably are
3 alternatives that represent less impact on the
4 environment and still produce some goods and services.
5 So it is a matter of selecting those again within the
6 framework of sustainability.

7 Q. Sure. Thank you.

8 MADAM CHAIR: Excuse me, Mr. Smith. The
9 statement that follows on page 26 where the forester
10 gives his the reason for his decision in two sentences,
11 would you expect to see that reason repeated in really
12 all forest plans on national forests?

13 THE WITNESS: That's the one that begins:
14 "However, I believe the preferred alternative...."

15 MADAM CHAIR: Yes.

16 THE WITNESS: "...achieves a balance
17 between economic benefits..."

18 Yes.

19 MADAM CHAIR: Is that generally a
20 statement of principle and policy, that the Forest
21 Service is saying this is the reason, this is the
22 thinking behind the reasons we make?

23 THE WITNESS: Yes. I feel every regional
24 forester would endorse that. The Forest Service would
25 generally endorse it.

1 What is that perfect balance is really
2 the question and the one that the plan attempts to
3 determine and there could be argument about what that
4 balance is, but that's his rationale that that best
5 meets the public's notion of balance.

6 MR. FREIDIN: Q. Along the same lines,
7 again, I am trying to - I am going back to what needs
8 fixing and trying to figure out what direction is being
9 recommended.

10 Can you turn to volume -- this is Exhibit
11 1772, Volume 2, page 46. There is a comment made in
12 this section -- the chapter is establishing an
13 information base for planning.

14 MS. SWENARCHUK: Volume 2?

15 MR. FREIDIN: Yes, Volume 2. The section
16 starts on Section 44, Establishing an Information Base
17 For Planning.

18 Q. There is a comment made in the first
19 few lines under the boxed-in portion, it says:

20 "The quality of the data for nontimber
21 forest resources has been even poorer
22 than that for timber, particularly in
23 terms that would permit a meaningful
24 assessment of the sustainability of these
25 resources in response to management

1 activities."

2 It goes on and make comments.

3 A. I'm sorry, I'm not finding that.

4 Q. Page 46.

5 A. Page 46.

6 Q. You see the portion that has been

7 boxed-in and right below -- it says:

8 "It collecting data, focus on areas where

9 decisions are critical."

10 A. Yes.

11 Q. Right below that, it says:

12 "The quality of data for nontimber forest

13 resources has been even poorer than

14 that for timber, particularly in terms

15 that would permit a meaningful assessment

16 of the sustainability of these resources

17 in response to management activities."

18 Would you comment on that observation by

19 the Conservation Foundation?

20 A. I believe that's accurate. The

21 Forest Service has a history dating back to -- well,

22 since the beginning of time of measuring the timber

23 resource and that evolved into a very elaborate and

24 sophisticated measuring system for national forests and

25 private lands, for that matter, on a cycle of every ten

1 years of actually gridding the entire forest with
2 plots, intricate measurements and then building stand
3 maps and, you know, all the data, eventually became
4 computerized. So there is a long history of building a
5 very accurate and continuing inventory for timber and
6 less than that on the other resources.

7 So it's kind of a catch-up game for
8 recreation. Not so much soil because the national
9 forests have a good soil survey and geological survey,
10 but many of the other values, the inventories are more
11 recent and not as detailed.

12 Q. All right. Could you turn to page 48
13 and go to the last full paragraph. Do you agree with
14 the comment in the first line:

15 "Not all data need be gathered by the
16 Forest Service itself..."

17 And if we go down to the fifth last line,
18 it says:

19 "Forest Service officials seek out data
20 that already exist, encourage a
21 continuing sharing of information with
22 outside organizations."

23 Do you think those are reasonable sorts
24 of expectations for any resource management agency?

25 A. Yes, and I believe that happens. The

1 Forest Service needs to be careful to validate, make
2 sure standards are met, but a good example is soils on
3 the national forest. In many cases, the Soil
4 Conservation Service, another agency collected those
5 data.

6 Another example would be snow surveys in
7 determining water yields from the national forest.
8 Universities are a good source of archaeological and
9 cultural resources.

10 So there is a number of places one could
11 go and, you know, the Forest Service need not duplicate
12 those inventories.

13 Q. Okay. In terms of continuing along
14 in the issue of data collection, can you turn to Volume
15 1, Exhibit 1790. Could you turn to page 18.

16 In the last paragraph, the marginal notes
17 says Clearly Articulate Resource Capabilities and
18 Limitations. It states:

19 "Sound analytical tools and information
20 are absolutely necessary to gain an
21 adequate understanding and articulation
22 of resource capabilities and limitation.
23 There is, however, a seemingly infinite
24 ability of people to require more and
25 move out of planning and the people in

1 charge of it. Absolute perfection in
2 analysis is not attainable in the real
3 world of incomplete information, limited
4 understand and uncertainty. It is
5 important to identify critical areas
6 where information and analysis are needed
7 and to match analysis requirements
8 carefully to the questions at hand -
9 considering staffing, budgets, and
10 existing technologies."

11 Do you agree with the observations made
12 in the first part of that paragraph and the conclusion
13 set forth in the last sentence?

14 A. I agree with most of that. I would
15 add to it, however, that I don't think it's enough to
16 specifically set out and collect inventory on what
17 represents critical areas today because critical areas
18 tomorrow and in the future may require additional data.

19 My notion of this -- and I am a little
20 bit critical about the general tenor of these
21 recommendations in that respect. I agree that you have
22 to deal with what you have and your resource to collect
23 it. So you gather up what is most critical to you at
24 that time, but over a period of time if an agency such
25 as the Forest Service or the MNR is to manage these

1 lands for all times into the future, then I think it is
2 wise to set some of a strategy and an objective and
3 goal to collect, you know, basic resource data that can
4 deal with the broadest range of critical issues in the
5 future and keep that data current and up to date.

6 That cannot be done over night. A good
7 example in the Forest Service is we do not have good
8 archaeological and cultural data. We are intending to
9 collect that as the need arises, but over time we are
10 trying to collect that into a good archaeological
11 database.

12 The other thing I would say is that if
13 the inventory is limited, which it certainly will be
14 because it's humanly to impossible to create it over
15 night and there are not those resources of staff and
16 budget to do so, that given the degree and completeness
17 of the inventory keep your decisions within that
18 framework. So that there will always be uncertainty.

19 Recognize that data is limited and do not
20 try to maximize the capacity of the lands and the
21 resources based on a limited database. Provide a
22 professional cushion, I would call it, or space, buffer
23 so that we are not bumping up against resource
24 capability.

25 Q. Accepting that there is a need to, in

1 fact, collect data and information in relation to
2 future issues, would you agree that when one considers
3 the issues staffing, budgets and existing technologies
4 that one would want to make sure that you have the
5 information first to, in fact, deliver the program and
6 manage the resource today?

7 A. That's correct, but in integrated
8 planning all data is important and it is just a matter
9 of using what you have commensurate with that
10 particular detail.

11 In other words, if I were proceeding with
12 timber harvest on the national forest and I only had
13 this much data, I would make sure my decisions in
14 capability, in production and so forth were within that
15 framework and not as if I had everything because there
16 is uncertainty involved.

17 Q. Can you turn to Volume 2, page 52 and
18 another comment by the -- this is by the Conservation
19 Foundation now, who you indicated in your evidence was
20 an objective group and one that you respected.

21 I want to see whether you differ from
22 their view, their recommendation. Again, I am happy
23 that you feel free to differ with them because I am
24 looking for your view and contrast it if it is
25 different. They say:

1 "Data collection priorities should be
2 issued driven. Rather than taking the
3 comprehensive approach to data gathering,
4 resource information should be collected
5 and analyzed in a way that is flexible
6 enough to permit planners and managers to
7 respond to changing information needs.
8 Precedence should be given to assembling
9 information to address current issues and
10 information that could make a critical
11 difference in the outcome of
12 decisionmaking."

13 Now, do you disagree with the tenor of
14 that as well?

15 A. I agree that -- this is what you
16 collect as a first priority, but I also feel that if we
17 are going to -- if the Forest Service is going to
18 remain the stewards of these national forests we ought
19 to have as a goal the eventual collection of data
20 beyond the critical issues of the day.

21 Q. I agree with that, but do you agree
22 then that this is true and that is what you would
23 collect as a first priority? Is that right?

24 A. Yes. I would also reserve a portion
25 of my budget every year to start chunking away at a

1 complete inventory.

2 Q. Okay. Mr. Smith, what knowledge, if
3 any, do you have regarding regular ongoing inventory
4 programs for non-timber values conducted either by MNR
5 in relation to Ontario or by other agencies in relation
6 to Ontario that the MNR can have access to?

7 A. I don't have knowledge. The only
8 knowledge I have is the review of limited documents.
9 So I could not consider myself qualified to tell you
10 one way or another.

11 Q. All right. Now, in your direct
12 evidence the Chair asked you if you had read the MNR's
13 process to obtain the information -- pardon me, the MNR
14 process as to how they obtain information regarding
15 values or areas of concern.

16 You said, I read a lot of material, I
17 guess you are referring to the material which was given
18 to you, I recall some information about that. I was
19 left with the impression that it was a bit ad hoc.

20 Now, if you haven't got -- if you haven't
21 the knowledge as to whether there are regular, ongoing
22 inventory programs for non-timber values, then that
23 statement was made then without the benefit of that
24 knowledge, obviously?

25 A. I have never been reluctant to

1 comment based on what I know. I do like to represent,
2 you know, the world from which I am coming from and
3 that was based on the documents I reviewed.

4 I got the strong impression in looking at
5 these documents, for example, the examples of values
6 map -- or value map and the areas of concern were more
7 on the order of discovery by local personnel, be it
8 either MNR or citizens, and not so much a deliberate
9 inventory of ongoing inventory to go out and find these
10 in advance.

11 Now, you know, again I am basing that on
12 what I saw and it gave me the impression that that's
13 what happened.

14 Q. Okay. That's fine. Thank you.
15 Could you turn to page 17 of the witness statement,
16 please.

17 MADAM CHAIR: Shall we take our morning
18 break soon, Mr. Freidin?

19 MR. FREIDIN: This is a good time.

20 MADAM CHAIR: Is this a good time?

21 MR. FREIDIN: Yes.

22 MADAM CHAIR: Thank you.

23 ---Recess at 10:20 a.m.

24 ---On resuming at 10:45 a.m.

25 MADAM CHAIR: Please please be seated.

1 MR. FREIDIN: Q. Could you turn to your
2 witness statement, please, page 17. Item No. 1, which
3 is the first step in the planning process for your
4 forest plans, indicates that:

5 "You identify public issues, management
6 concerns and resource use and development
7 opportunities to enable planning efforts
8 to be concentrated in areas where there
9 are specific interests."

10 What do you mean concentrate your efforts
11 in areas where there are specific interests?

12 A. Let me relate that to the Willamette
13 National Forest Plan. Looking at the public issues
14 there, timber harvest, the amount of timber harvest,
15 clearcutting as an issue, biodiversity, those are the
16 kinds of things that were important and degrees of
17 controversy, concern, public values.

18 That would be done with the knowledge of
19 the forest staff and in collaboration with the public
20 to make sure that the forest plan, you know, made
21 decisions that related to those issues.

22 Q. And by concentrated in that area,
23 what does that mean?

24 A. That's a term that was used by the
25 Forest Service to describe the planning process. I

1 think it means that you certainly want to focus the
2 planning effort on those areas of concern to the public
3 and to the agency itself. That's what concentrated
4 means.

5 Q. Okay, thank you. I think you
6 probably said almost everything there is to say about
7 planning teams, but I think just a few more things.

8 Could you turn to Volume 2, that's
9 Exhibit 1772, Volume 2 of the Critique of Land
10 Management Planning at page 22. Under Exercise
11 Leadership, it says:

12 "The Forest Service is looked to for
13 leadership, and, in the words of one
14 workshop group, 'the agency should not be
15 afraid to make the hard decisions'. All
16 parties share in the task of building the
17 plan, but only the Forest Service has the
18 authority to make - and is accountable
19 for - the final decision. Workshop
20 participants felt that decisions by
21 Forest Service official should be made
22 neither neither by agency fiat nor by
23 some kind of majority rule by users. To
24 a person, workshop participants were
25 opposed to vote-counting - decide an

1 issue on the basis of the volume of mail
2 received pro and con. Similarly, no one
3 seems to be satisfied with agency
4 official who see their role only as
5 mediators who hold no strong values or
6 act as if they possess no expertise of
7 their own. Nor should the Forest
8 Service simply seek to occupy the middle
9 ground between conflicting political
10 pressures, a position one group likened,
11 with some mixing of metaphor, to
12 'beleaguered weather vanes.' The agency
13 must always argue vigorously for
14 maintaining the integrity of the land and
15 resources for future generations."

16 Do you agree with the statement of the
17 Conservation Foundation?

18 A. Yes, I do.

19 Q. The Conservation Foundation states on
20 the next page in the first full paragraph:

21 "In many instances, however, consensus
22 will not be achieved. Interest will not,
23 in good conscience, be able to compromise
24 strongly held values. Or one interest
25 will believe that it can win in the

1 courts or in Congress. Under these
2 circumstances, the Forest Service must
3 make the hard choices."

4 Do you agree with that?

5 A. Yes.

6 Q. Bringing it to the ground and giving
7 you a specific example, would you agree, therefore,
8 that what this -- well, if you had a situation where
9 two parties, be it two individuals, two interest
10 groups, whatever, were concerned about an issue out
11 there in the forest that they wanted to resolve during
12 the preparation of a plan and the two them came to an
13 agreement and they said: That will satisfy us, that
14 what this statement is saying is that there are
15 circumstances where the Forest Service itself, because
16 they are the stewards of the land, might have to make
17 the hard choice and say: You may come to an agreement,
18 you may resolve your conflict and things would be easy
19 for you, but we think as stewards of the land that the
20 proper thing to do is to do something different, and in
21 those cases this report is saying that the Forest
22 Service is expected by the public to do that and to
23 give reasons why they are doing that?

24 A. That's an accurate statement.

25 Q. Okay. You made a comment a number of

1 times through your evidence about multi-disciplinary
2 teams, and we dealt multi-disciplinary versus
3 inter-disciplinary teams.

4 Let me just see if I can find the page.
5 When you reviewed the material that you were given, did
6 you gain the impression that the plan was prepared by
7 one person and not by a team of people?

8 A. I gained the impression that the plan
9 was developed by what I would call a multi-discipline
10 team made up generally of a forester, I think there was
11 in some cases named a wildlife person, maybe a
12 recreation person, sometimes -- the author apparently
13 is the team leader, and I think I saw it both ways
14 where MNR provided the author and a licenced company in
15 some instances provided the author.

16 Q. What was it that you saw in the
17 limited documents that you looked at that made you come
18 to the conclusion that you were seeing
19 multi-disciplinary? Let's start there.

20 A. All right. I don't think there was
21 any one place that, you know, provided evidence that it
22 was multi-disciplinary versus inter-disciplinary, but
23 the overall impression was the beginning premise was to
24 harvest timber and then everything else was considered
25 in that context. Sort of reactive. If you cut timber

1 in the normal sense here, the recreation person might
2 be -- might initiate or be asked, what does this mean,
3 how can we mitigate impacts on recreation or wildlife
4 habitat or whatever it might be.

5 So I got the impression in reading these
6 documents that it was more or less a reactive
7 relationship to timber harvest or road building.

8 Q. And would it be fair to say that
9 whether it is reactive or whether it is
10 inter-disciplinary in the way you define that term
11 would really be a reflection, or could best be seen if
12 one was actually involved in the meetings where they
13 sat around the table and they discussed the things and
14 they came to conclusions?

15 That would be the best way of really
16 seeing whether, in fact, it was multi-disciplinary or
17 inter-disciplinary as you defined it?

18 A. I think the physical setting might be
19 the same. You may all be sitting --

20 Q. I am not talking about the physical
21 setting, I am talking about the exchange between
22 people, the mind set that they had, how they had in
23 fact approached dealing with all values, not just
24 timber values. It would be the kind of atmosphere in
25 the room and how the conclusions actually got made that

1 got recorded in the plan.

2 I suggest to you that that is what
3 dictates whether a process is a multi-disciplinary or
4 an inter-disciplinary one, as you've defined it?

5 A. My own belief it that that has to be
6 within an environment that has established integrated
7 resource management as a goal and not timber management
8 here, another goal set for recreation, but all of that
9 developed in the context of all the uses. You know,
10 it's hard for me to really react to what you say. It
11 might or might not, depending on the framework within
12 which that activity occurred.

13 Q. Right.

14 A. If it occurred in the context of an
15 integrated resource plan with goals and targets and
16 alternatives for all resources, then yes, I think the
17 give and take because they are reaching towards a goal
18 that accounts for all sources.

19 If the goal is to harvest timber with
20 least impact on other resources, then I see that more
21 as a multi-discipline.

22 Q. Thank you. Could you turn to the
23 proposed regulations, Exhibit 1781, please, page 6524.
24 I believe under the heading Interdisciplinary Approach,
25 if we read certain portions of it, I want to see

1 whether you agree with me that your evidence is
2 consistent with the view of the Forest Service
3 generally as it is set out here. It makes the comment
4 about five lines down, this is page 6524, left-hand
5 column under the heading Interdisciplinary Approach, it
6 says:

7 "Team membership would be limited to
8 Forest Service or other federal
9 government personnel..."

10 If you go down to the next paragraph and
11 down about five or six lines, it says:

12 "Consideration was given to allowing
13 membership of the interdisciplinary team
14 to be expanded to individuals not
15 employed by the federal government."

16 MS. SWENARCHUK: Mr. Freidin, you should
17 read the complete first sentences. You didn't read
18 until the end of it.

19 MR. FREIDIN: All right. I'm happy.

20 Q. "Team membership would be limited to
21 the Forest Service or other government
22 personnel, although other persons may BE
23 involved when specialized knowledge
24 is not available on the team."

25 I think that is consistent with your

1 evidence.

2 A. Yes, it is.

3 Q. "Consideration was given to allowing
4 membership of the interdisciplinary team
5 to be expanded to individuals not
6 employed by the Federal government."

7 I think if we read through here they come
8 to the conclusion that they were not going to allow
9 membership on the planning team and there is a comment
10 in the middle column in the first full paragraph about
11 five lines down:

12 "Although the agency fully endorses the
13 desired improvements and communication
14 with other governments and the public,
15 membership on the interdisciplinary team
16 is not viewed as a requisite to do so.
17 In fact, it would be disadvantageous if
18 expanded membership on interdisciplinary
19 teams were to be viewed as providing some
20 segments of the public better access to
21 the planning process than was available
22 to other segments. It is recognized that
23 cooperating agencies do have interest
24 and responsibilities which merits special
25 coordination efforts, but

1 interdisciplinary team membership does
2 not appear to be a valid option for
3 establishing such ties..." and they go
4 on.

5 It seems to me that is dead on with what
6 your opinion is?

7 A. That's consistent with my opinion
8 based on the United States experience.

9 I am not staying that that won't work, to
10 have, you know, other people as part of an
11 inter-disciplinary team, but I think on balance my
12 inclination would be not do that, to find other ways
13 for, you know, interest groups in particular to be
14 members and provide inputs.

15 Q. All right. While we have the
16 documents, the proposed regulations in front of us, can
17 you turn please to page 6525.

18 MR. MARTEL: Can I ask you a question,
19 and maybe Mr. Freidin can correct me if I'm wrong, but
20 in certain instances I believe that MNR - and I am just
21 going by memory now - MNR can allow someone from
22 Industry on the planning team.

23 MR. FREIDIN: Industry in accordance with
24 the terms and conditions of MNR and I believe the
25 Industry have as a member of the team a company

1 forester where the plan which is prepared is for what
2 we call a company unit or a forest management agreement
3 area.

4 These are areas where the -- let's just
5 deal with the forest management agreement areas, where
6 the company has the responsibility for harvest, for
7 renewal and preparing the planning and they are on the
8 team along with people from the Ministry of Natural
9 Resources who in fact would provide expertise and have
10 the input in relatio to the management of non-timber
11 values particularly.

12 MR. MARTEL: You see, I think that's
13 what's prompted a lot of interest groups to suggest
14 that they need to be part of the team.

15 I mean, it just leads, if they can be
16 part of the team -- and I don't know how you get around
17 it, quite frankly. But if they are part of the team,
18 so too should the interest groups and I think that's
19 what's led to all the interest groups saying: Well, we
20 want one person on that team as well.

21 I mean, I think that's what has led them,
22 my presumption might be wrong, but I don't think so,
23 and I would ask for your comment then because of that.

24 MR. COSMAN: Perhaps just before Mr.
25 Smith responds, it was Industry's proposal, you will

1 recall, not just to have an Industry representative on
2 the planning team or advisory committee, as we call it,
3 but also members of interest groups. So it wasn't a
4 privileged position at all.

5 MR. MARTEL: No, I wasn't trying to imply
6 that, Mr. Cosman. I was just suggesting that that
7 might be what triggered other interest groups to say
8 that they wanted -- and this was before we got your
9 plan before us.

10 MS. SWENARCHUK: I think we need to
11 clarify whether we are talking here about planning
12 teams or advisory groups. There is a difference, and
13 there is clearly a difference in what Mr. Freidin is
14 describing as opposed to an advisory group, three
15 levels of the province, which I think is what Mr.
16 Cosman is suggesting.

17 But I think the point remains the same,
18 the Ministry does propose that an Industry forester
19 have a role on a planning team on at least two kinds of
20 units.

21 MR. FREIDIN: I think regardless -- and
22 if I misstated your position Mr. Cosman, I apologize.

23 MR. MARTEL: I am just saying, that's
24 what triggered I think the response for everybody else.

25 THE WITNESS: I believe that is the view

1 of the U.S. Forest Service, that if you allow one
2 interest group on the team you have no choice but to
3 allow others and the fear --

4 MADAM CHAIR: But, Mr. Smith, is that
5 more of a concern with respect to the legal
6 responsibility of the U.S. forest system for the plan?

7 THE WITNESS: I believe that the
8 regulations guiding the Forest Service would disallow
9 it, but the rationale for that prohibition is based in
10 this fear that if you allow one interest group to have
11 team membership, then there is to end to it. You have
12 to allow --

13 MADAM CHAIR: Has it been your experience
14 that there is that sort of desire by many, many people
15 to be on a planning team?

16 THE WITNESS: No, it is not, and I think
17 the reason it is not is that they are all comfortable
18 if they are treated equally.

19 If we were to put the industry, any
20 industry, grazing or timber on our planning team, I
21 mean we would just be absolutely stopped dead in the
22 water. We would not go one step further because we
23 would be in court and if the courts sustained that for
24 one reason or another, then we would be obligated to
25 put every interest on that team and that could involve

1 20, 30, 40 people because everybody -- you know, it is
2 so specialized in the United States.

3 MADAM CHAIR: Exactly, your situation is
4 quite different than our situation?

5 THE WITNESS: Yes.

6 MR. FREIDIN: Q. Would you agree, jsut
7 following up on from that document, would you agree
8 that the relationship between the regulator, in this
9 case the MNR, and the forest industry, legal
10 relationships, obligations that existed through
11 legislation or agreements, could influence the
12 reasonableness of whether or not membership should be
13 permitted or would be reasonable for the forest
14 industry but not for other groups?

15 MS. SWENARCHUK: I object to that
16 question.

17 MR. MARTEL: Just a moment. I want to
18 hear Mr. Smith's response because you can couch
19 anything up want in the regulations or the legislation,
20 you can have anybody you want, Mr. Freidin, but in the
21 final analysis the Ministry decides who it wants on the
22 planning team, and I am simply saying that the planning
23 team -- the other participants in the game that's going
24 on out there take the same position: We don't care.
25 If they have a right to it, so too do we.

1 MR. FREIDIN: As you know, we will argue
2 at the end of the day --

3 MR. MARTEL: I understand what you will
4 argue.

5 MR. FREIDIN: I want to find whether the
6 witness would agree that without knowing all the
7 relationships between the Industry and the regulator
8 here, it's difficult to say that it would be
9 inappropriate in this case to allow the Industry on the
10 team as a member, but follow the same role that you
11 have in the United States by not allowing other
12 interest groups.

13 THE WITNESS: I will give you my opinion.
14 I think that very relationship argues strongly for
15 excluding the Industry from membership on the team and
16 I take it that would be the opposite of your view.

17 In the United States, that relationship
18 would make it even of greater concern because there is
19 a invested interest and it would be my opinion that
20 that Industry forester although -- you know, I wouldn't
21 dispute the integrity or professionalism of that
22 individual, but the objectives of that particular
23 interest are much different than the MNR's or the U.S.
24 Forest Service.

25 Q. Okay, thank you.

1 MR. MARTEL: No one wants to call the
2 integrity of anyone into consideration. I mean, that's
3 the difficulty that one arrives at. If you allow one
4 interest group in, how do you keep all the rest off?

5 I mean, it's pretty basic if you are
6 sitting on the outside demanding a say if someone seems
7 to have priority. People can rationalize it any way
8 they want, you still come down to it causes -- I think
9 it causes mistrust, the word I asked earlier this
10 morning about trust, and we need that I think if we are
11 ever to reach agreements and get away from lengthy
12 delays and whatnot that transpires and even the
13 perception of it can create I think unrest in the
14 natives.

15 MR. FREIDIN: And whether in fact the
16 Industry is characterized properly as an interest group
17 like other interest groups, we will deal with that
18 another day.

19 MR. MARTEL: Okay.

20 MR. FREIDIN: Q. From that, let's go to
21 page 6525, please, of volume -- pardon me, of the
22 proposed regulations.

23 You are not a wildlife biologist, Mr.
24 Smith, but you have, however, been involved in plans
25 for many, many years where wildlife considerations have

1 been taken into account?

2 A. Yes.

3 Q. I am going to refer you to a section
4 of the proposed regulation. If you feel you have the
5 expertise to answer the question, do so; if you don't
6 think you have the expertise, say you don't.

7 It is basically the section at -- turn to
8 6526 where the commentary says that:

9 "The definition of viable populations,
10 as used in paragraph (b)(2) and defined
11 at paragraph 219.32 varies from the
12 definition described in the existing
13 regulation. The definition of viable
14 population in the existing regulation
15 states that 'a viable population shall
16 regarded as one which has the estimated
17 numbers and distribution of
18 reproductive individuals to ensure its
19 continued existence is well distributed
20 in the planning area.

21 The preliminary regulatory text would
22 modify that definition to better address
23 biological considerations. With the
24 existing definition, individual National
25 Forests are the spatial units

1 within which viability must occur.

2 Planning difficulties have been
3 encountered with this requirement. Some
4 species have populations whose space
5 needs often include more than one
6 National Forest. For these species, it
7 is impossible to have viable populations
8 on each National Forest. The current
9 definition does not clarify intent for
10 these cases.

11 The new definition defined at paragraph
12 219.32 would state a viable population is
13 'a population of plants or animals whose
14 estimated number and distribution
15 of reproductive individuals provides a
16 high likelihood of continued existence
17 generally throughout its current range.'

18 It should be noted that in this
19 definition current range becomes the
20 spatial unit for population viability,
21 and the problem of populations whose
22 species needs include more than one
23 National Forest would be overcome. By
24 making home range the space where a
25 population is defined, administrative

1 boundaries would become unimportant in
2 defining viability."

3 Now, are you able, based on your
4 experience, to comment as to whether that seems to be a
5 reasonable change in direction?

6 A. Yes. Everything I have learned from
7 our biologist and ecologist, vis-a-vis this planning
8 effort, would indicate that's correct.

9 And, in fact, I wouldn't limit it to
10 national forests, but I would also include sort of the
11 bioregion would which include private land, national
12 parks, you know, every jurisdiction within that range.

13 Q. Okay. Following along from that
14 comment, Ms. Seaborn in her cross-examination was
15 drawing your attention to the fact that in many, many
16 parts of the United States when you look at national
17 forests they are -- I think she used the term
18 independent islands, that they are separated by
19 non-forested areas or areas which are not within the
20 jurisdiction of the Forest Service, and you pointed out
21 on the west coast there is sort of a contiguous series
22 of national forests north/south, but if you are start
23 going east/west they are indeed split apart.

24 When the national forest planning scheme
25 was put into place and when you actually do your forest

1 plans, is the rigor to which you do your planning, the
2 intensity to which you deal with certain issues, is it
3 affected in some way by the belief or the concern that
4 you are indeed in many respects sort of islands, that
5 next door the kind of management that's going on is
6 there is no management or not an acceptable level of
7 management and you have got to provide the benefits
8 that are set out in the regulations, be it biodiversity
9 and all these sorts of things, in your national
10 forests? If you don't do it there you are going to
11 lose it.

12 Does that sort of thinking affect sort of
13 the effort that you are putting into your plans?

14 A. I think to some degree it does. If
15 there is a public benefit that is not provided on
16 adjacent private lands and there is no mechanism to
17 provide that, then people in the Forest Service look to
18 the national forest to be a more principal provider of
19 that benefit.

20 On the other hand, the Forest Service in
21 its planning process emphasizes the need to plan on the
22 national forest. Not in isolation, but in concert, in
23 collaboration with other jurisdictions, that those
24 other jurisdictions may be constrained by the
25 jurisdiction's objectives. Private land, if it is

1 commercial forest land, the objective may be the
2 production of timber for economic profit.

3 A national park, on the other hand, would
4 be just on the other end of that continuum.

5 All those things are taken into account
6 and as the national forest planning proceeds there is
7 the attempt to coordinate with other jurisdictions.

8 In terms of viable populations and
9 interconnectedness that is essential for these broader
10 areas, every effort is made through a variety of means
11 to accomplish those goals across jurisdictional
12 boundaries rips.

13 For example, we have what we call
14 coordinated resource management planning which a number
15 of public agencies and the private sector collaborate
16 to achieve public values irrespective of where they
17 might lie.

18 A good example of that is where in
19 certain parts of the west riparian habitat is critical,
20 it is probably the most critical habitat for wildlife,
21 and on private land it is also heavily used for
22 grazing. There have been these coordinated land
23 management planning efforts that would reach agreement
24 with the private land owner to protect the riparian
25 area from grazing of domestic livestock in return for

1 opportunities to utilize the national forest away from
2 riparian areas for livestock grazing. That is becoming
3 more and more the norm because these public benefits
4 don't stop at public land boundaries.

5 Biodiversity is another good example.
6 How do you retain biodiversity in a mixture of private
7 and public lands. There has to be collaboration.

8 So it is kind of a matter of degree. You
9 have to be realistic that public lands are going to
10 provide more of the non-market values than the private
11 lands, but it is not totally that way either.

12 Q. You may have just answered the
13 question I was going to ask.

14 Can you give me some examples of the
15 kinds of benefits that you believe that the national
16 forest emphasize in terms of making sure they are
17 provided because they are not indeed being provided
18 next door because next door maybe private land?

19 A. I think the prime example would be
20 wilderness. There are very few private landowners who
21 are willing to place their properties into a wilderness
22 situation unless it is their backyard where they
23 personally enjoy naturalness, but the real values of
24 wilderness are almost totally expected to come from the
25 public lands. So that would be the extreme example.

1 Q. Okay. Could you turn to the record
2 of decision for the Willamette, Exhibit 1754B, please.
3 Just sticking for a moment with this issue of wildlife
4 that got us into this discussion. On page 21, dealing
5 with wildlife and fish habitat it states in the fourth
6 paragraph:

7 "The National Forest Management Act
8 requires that forests 'provide for
9 adequate fish and wildlife habitat to
10 maintain viable populations of existing
11 native vertebrate species.'"

12 Now, that's what it says in the present
13 regulation, Section 2.19. It talks about vertebrate
14 species. I got the impression that there is an
15 intention not only to vertebrate species, but
16 invertebrate species as well and it may be just my
17 inability to read the regulations or something else.

18 Are you able in any way to clarify my
19 confusion having regard to reference to vertebrate
20 species as stated here in Willamette forest plan?

21 A. Yes, I think I can. Vertebrates are
22 related to the -- you know, the kind of traditional
23 fish and wildlife concern of deer, elk, fish, a variety
24 of other piece of wildlife.

25 Non-vertebrates are primarily related to

1 biodiversity and I don't think the regulations and the
2 statutes are nearly as specific about non-vertebrates,
3 but certainly it is implied, as any scientist can tell
4 you, it is part of the biological diversity and that's
5 where in new forestry, this so-called new forestry
6 begins to deal with non-vertebrates and lower level
7 plant life that is important to the integrity of the
8 ecosystem.

9 I think you will find in future documents
10 that there will be more specificity about
11 non-vertebrates. Before we had just not been concerned
12 about those, we didn't realize those interwoven
13 relationships.

14 Q. Okay. I want to deal with the issue
15 of clearcutting. You, in your evidence, and I think
16 perhaps you were talking of practices perhaps more
17 common in the past, when you talked about clearcutting
18 you used phrases such as rolling over the area, you
19 used a phrase such as we slicked it off.

20 Did I get the impression that when you
21 were talking about clearcut areas you were talking
22 about going into areas and, in fact, cutting them clear
23 of vegetation?

24 A. Yes, that has occurred in the past.

25 Q. That's what you meant when you used

1 those phrases, areas being cut clear of trees--

2 A. Yes.

3 Q. --is what clearcutting meant?

4 A. Well, that's one application of
5 clearcutting. Clearcutting is a silvicultural
6 technique for even-age management and it's an easy one
7 and silviculturally it has a lot of advantages in the
8 Douglas fir region and other forest types as well, I
9 suppose.

10 MS. SWENARCHUK: Excuse me, if Mr.
11 Freidin's question here is the question of whether what
12 was removed was merchantible timber or all vegetation,
13 I think it might be helpful if the question were put in
14 those terms.

15 MR. FREIDIN: Q. Can you answer that
16 question?

17 A. What was removed was merchantible
18 timber; that is, marketable raw material, whether it be
19 saw timber, Peter blocks, pulpwood, that sort of thing.

20 In most of these forests there is a great
21 amount of residual remaining unless it is a second
22 growth forest that has very little defect -- you know,
23 rot and snags and so forth.

24 Q. All right. So when you used -- in
25 the past then before the present approach which is

1 being advocated, you are saying that in areas which
2 were subject to the clearcut silvicultural system after
3 harvest there would be residuals left?

4 A. There would probably not be residual
5 trees, living trees nor even standing dead. That is a
6 past practice.

7 Q. What would have been left in the past
8 practice?

9 A. A lot of debris on the ground.

10 Q. All right.

11 A. In the form of limbs, tops, defective
12 material that had been bucked out of logs and left
13 because it had no commercial value.

14 Q. In terms of standing trees there
15 would be virtually nothing left. Is that the
16 understanding I should...

17 A. That was one practice, new forestry
18 practice that's moving us into a different kind of
19 clearcut.

20 Q. Okay. Now, you were asked during
21 your evidence about the European model and you said:
22 We don't practise that anymore and right after that you
23 referred or you used the phrase homogenized landscape.

24 Were you saying that it is your
25 understanding that the European model results in a

1 homogenized landscape?

2 A. I don't recall anybody asking me
3 that, but--

4 Q. I am asking you that.

5 A. --I do recall discussing it. Yes, I
6 think the 19th century European model pretty much
7 developed in Germany and adopted by the United States
8 was one of homogeneous forestry as opposed to sort of
9 heterogeneous forestry.

10 Q. What do you mean by homogenized
11 landscape?

12 A. I mean, in the case of the Douglas
13 fir region where my experience is, would be to practice
14 even-aged management and concentrate on the favoured
15 species, in this case Douglas fir.

16 Now, in nature, you know, Douglas fir
17 doesn't come back a hundred per cent, there are other
18 species mixed in it, but by and large you would see a
19 landscape that was pretty much one species, one age
20 class and, you know, homogenous as a forest is going to
21 be.

22 Q. All right. So when you used the
23 phrase homogenized landscape you were describing a
24 situation which I think has also been described as a
25 monoculture. You manage it intensively so you have one

1 species of trees and that's really all you manage for
2 and that's all you try to get on the landscape?

3 A. In my experience as a forester,
4 achieving a strict monoculture is almost impossible.
5 Even if we tried to do it we couldn't do it.

6 You might come closer to that in the
7 United States, for example, in the southeast where
8 mixed stands of trees were converted to various
9 southern pines and basically that's what they grew
10 there on a short rotation.

11 Q. Would you agree with me, Mr. Smith,
12 that if you were going to practise timber management,
13 if you were going to manage as part of your ecosystem
14 the timber resource, that to be responsible you must
15 implement accepted silvicultural systems for the
16 species being managed?

17 A. That's right, but I would add to that
18 that one must be careful to manage for the integrity of
19 that ecosystem, and perhaps on the short-term a
20 preferred silvicultural system from the standpoint of
21 maximizing growth and maximizing the economy -- the
22 economics of the area could over a long-term period
23 result a decline in productivity.

24 Now, that is pretty much been established
25 by our research scientists, that in the short-term

1 maximization may lead to a long-term decline.

2 Q. Okay. If there is a conflict between
3 the principles of sustainability and stewardship on the
4 one hand and social/political concerns on the other,
5 and now we are talking about size of openings, what do
6 you do? Which gives?

7 A. From the U.S. Forest Service
8 standpoint, we stand by stewardship and sustainability
9 because this is in our statutes.

10 If the statutes were changed, in effect
11 the Congress said: We will henceforth mine these
12 forests like coal or gold, then the Forest Service
13 would be required to follow the statutes. I think a
14 lot of Forest Service employees would quit and go work
15 for somebody else.

16 Q. Could you turn to the proposed
17 regulations again, Exhibit 1781, and could you turn to
18 page 6527, please.

19 On page 6527, in the left-hand column,
20 halfway down the second last paragraph they refer to
21 paragraph (f) and say:

22 "Paragraph (f) would impose five
23 limitations on the use of
24 even-aged management..." and it talks
25 about clearcutting.

1 I want to go down to the fourth last line
2 where they start talking about new forestry which you
3 have referred to.

4 "Recent research findings, as reflected
5 by the 'New Perspective in Forestry
6 Concept', have indicated there may be
7 significant benefits to reconsidering the
8 desirable size of clearcuts. In light of
9 the changing scientific opinion on this
10 topic, the prescriptive nature of the
11 existing regulation appears potentially
12 counterproductive to the concepts of
13 integrated resource management.

14 Therefore, rather than establishing such
15 limitations through regulation, paragraph
16 (f)(3) would provide that the limitations
17 be established through the forest
18 planning process. This approach would
19 allow more flexibility to change as
20 scientific knowledge continues to
21 evolve."

22 There is reference to a changing
23 scientific opinion on the topic. Are you able to
24 advise me what that refers to?

25 A. In my opinion it refers to so-called

1 fragmentation and that has to do with a number of small
2 clearcuts evenly distributed through a landscape that
3 tends to fragment large blocks of forest that is -- I
4 don't know want to use the term old growth, but
5 basically surviving under kind of natural processes.

6 From a biodiversity standpoint it is
7 better to have sort of an even distribution of large
8 blocks than to have a more dense distribution of small
9 blocks. That's not a -- that's a very awkward way to
10 say it, but I believe that that this concern is coming
11 out of this fragmentation issue.

12 So they are saying it is better to
13 probably concentrate in an area, have a little bit more
14 cutting in a particular area while, at the same time,
15 preserving a larger block with sort of interconnecting
16 corridors of untouched or at least forest land that is
17 left to more natural processes over a period of time.

18 MADAM CHAIR: Excuse me. By large
19 blocks, Mr. Smith, do you mean 40 acres or...

20 THE WITNESS: When I refer to large
21 blocks I am referring to large remaining areas; in
22 other words, if you had a -- let's just take for
23 example 20,000 acres, which is a fairly large area in
24 the United States, it might represent a major watershed
25 for example, it would be better to not cover that

1 entire watershed, that entire 20,000 acres with small
2 clearcuts that look like chicken pox. That would
3 fragment the remaining, you know, untouched area to the
4 point where the biodiversity advantages would be lost.

5 MADAM CHAIR: By small blocks, do you
6 mean the 40 acre clearcut limit?

7 THE WITNESS: In the clearcuts, yes, it
8 could be 40 acres or 20 acres. Generally, the average
9 size of these clearcuts is smaller than the limit. The
10 average size of clearcuts for the Willamette National
11 Forest, for example, are under 30 acres, even though --

12 MR. FREIDIN: Q. That's the Willamette
13 forest?

14 A. That's the Willamette forest. It is
15 my understanding in talking with regional foresters and
16 forest supervisors that that's the case, that if the
17 region has a 40 acre maximum size the average size is
18 considerably below that.

19 Q. Are you able to provide any comments
20 on --

21 MR. COSMAN: Sorry, Mr. Freidin. I
22 wasn't sure from the answer to that question whether
23 the witness was speculating as to what the specific
24 research findings were that were behind this change of
25 direction by the Forestry Service of the United States

1 or whether he actually knew what specifically they were
2 looking at.

3 THE WITNESS: I'm not a research
4 scientist, although I have spent a career listening to
5 research scientists and trying to adjust my own
6 decisions to relate to information available.

7 I feel that this concern is related to
8 fragmentation, as I described it, and that
9 fragmentation is based on a couple of decades of work
10 by the Forest Service and university scientists that
11 revealed the needs of -- first of all, the value and
12 then the needs for biodiversity.

13 I am certainly not an authority on this,
14 but I have listened to the arguments and the findings
15 and conclusions, and as a forester and someone who has
16 managed these forest lands I tend to agree with it.

17 MADAM CHAIR: So what's your point, Mr.
18 Smith, if you look at the 20,000 acres, you should put
19 the 40 acre clearcuts on 10,000 acres as opposed to 20
20 acre clearcuts over 20,000 acres?

21 THE WITNESS: Yes. Whether it would
22 actually be on the 10,000 or even something smaller I'm
23 not sure.

24 MADAM CHAIR: But when you say larger
25 clearcuts you are not suggesting larger than the limit

1 of 40 acres in some areas?

2 THE WITNESS: I did suggest in my witness
3 statement we were kind of rethinking that. Now, you
4 have to realize the world I'm in though.

5 When I say a large clearcut I'm talking
6 about something greater than 60 acres or greater than
7 40 acres depending on the area. I don't visualize any
8 clearcut in the United States going much beyond a
9 hundred acres and by your standards that is very small.

10 Now, I am not suggesting what is right or
11 wrong for Ontario because this would be a standard for
12 the Douglas fir region of the Pacific northwest. What
13 is applicable to the boreal forest I don't know,
14 although I'm sure that when you start talking about a
15 thousand, 2000, 20,000 clearcuts, in my own heart I
16 know that that's going to break the bank in terms of
17 what the U.S. Forest Service is trying do.

18 When we are managing boreal forests in
19 Alaska we don't go -- we have a hundred acre limit. I
20 think we might have to break that a bit in order to
21 achieve some of these other purposes, but not by much.

22 MR. FREIDIN: Q. Now, you comment that
23 the new forestry literature -- am I correct that when
24 it is talking about dealing with this fragmentation
25 issue, and I think maybe you referred to this in your

1 evidence, that you are talking about - leaving aside
2 how much larger they would be - they are talking about
3 making your clearcuts contiguous, one butting up
4 against the other?

5 I will tell you what, I think we have
6 dealt with it and I am just repeating the evidence.

7 A. I don't think there is an advocacy of
8 putting clearcuts next to each other. You know, there
9 may be space between them or they may be up next to
10 each other depending on the circumstance, but I am
11 saying that you would concentrate your cutting in a
12 relatively smaller area to allow for larger blocks. In
13 our case, particularly old growth and the species that
14 rely on old growth.

15 Q. Okay.

16 MADAM CHAIR: Excuse me, Mr. Smith. In
17 conclusion to this discussion, this research you are
18 talking about or these opinions about what
19 fragmentation is really come down to the issue of in
20 the United States you are looking at more arguments
21 against harvesting timber and against using clearcut
22 methods?

23 You are talking about less timber and
24 even a lower reliance on clearcuts?

25 THE WITNESS: I think there is definitely

1 a dissatisfaction with clearcutting as a technique. I
2 don't think it's like two following one, that that
3 necessarily means a reduction in timber production and
4 certainly the --

5 MADAM CHAIR: Well, it does with respect
6 to allocating a smaller land base for commercial timber
7 harvesting?

8 THE WITNESS: Oh, yes. The land base can
9 only offer so much and if you reduce the land base --

10 MADAM CHAIR: That's right. If you talk
11 about smaller clearcuts encompassing smaller areas,
12 then it seems inevitably you are talking about taking
13 off less timber.

14 THE WITNESS: No, let me clarify that.
15 The whole 20,000 acres may be available for timber
16 harvest for a long period of time. It is just over a
17 sort period of time you would not fragment it with
18 clearcuts.

19 You would maybe on the front end of the
20 rotation concentrate on the first 10,000 acres and at
21 the back end of the rotation concentrate on the second.
22 The whole thing may be cut eventually, but it would be
23 cut in a different distribution and different schedule.
24 So I'm not talking about reducing the amount of land
25 base; that would remain the same. It would be the way

1 that you scheduled it and distributed the harvest
2 units.

3 MADAM CHAIR: When you are looking at a
4 schedule, though, over one rotation you are not talking
5 about even medium term timber supply?

6 THE WITNESS: I'm not sure I...

7 MADAM CHAIR: If you are talking about
8 taking the 20,000 acres and cutting it over a rotation
9 period, let's say a cut at year one and a cut at 65 or
10 75 or 80 years or whatever the rotation is, that
11 suggests that the timber supply in fact is not
12 available now nor will it be more for the medium term
13 and, therefore, there is less timber available.

14 THE WITNESS: Well, there would be
15 another 20,000 acres you would be dealing with. So
16 taking the forest as a whole, the land base wouldn't
17 change and the production wouldn't necessarily change
18 in order to avoid this fragmentation problem because
19 everything would still be available, it would be a
20 matter of scheduling it differently and distributing it
21 differently at different times.

22 Now, obviously, you know, you have to
23 accept the forest in these various age groups of what
24 it is today. You can't change. It would be nice if
25 everything were the right age. It isn't necessarily

1 that way, so consequently we may cut some timber beyond
2 rotation age and others maybe a little bit before in
3 order try to get that balance.

4 But, again, I'd have to emphasize that
5 doesn't necessarily cause the timber production to
6 decline. It just talks about where it is going to
7 occur.

8 MADAM CHAIR: Thank you.

9 MR. MARTEL: Can I ask one question.
10 What type of logging are you doing? Are you doing
11 full-tree in your clearcuts?

12 THE WITNESS: No, full-tree in the
13 Pacific northwest is almost non-existent.

14 MR. FREIDIN: Q. Just before we go on,
15 we have described full-tree as taking the stem with the
16 branches. We have described whole-tree as taking the
17 stems and the roots.

18 So when you are using the term full-tree,
19 are you using the one where you take it with the roots
20 or are you just talking about the stems and the
21 branches?

22 A. Just the stem and the branches.

23 Q. Just so we are clear.

24 A. There are places in the south, as I
25 understand it, that the whole tree -- they root the

1 whole thing out and make turpentine out of the stump
2 and this and that. That doesn't happen in the Pacific
3 northwest, nor do I think it happens in the national
4 forest. Pulling it out by the roots is so disruptive
5 to the soil that we wouldn't do that.

6 We do very little full-tree from the
7 stump up; that is, drag it to the landing and cut off
8 the limbs. We don't do that as a normal practice.

9 MR. MARTEL: It is delimbed right in
10 the...

11 THE WITNESS: That's right.

12 MR. FREIDIN: Q. Okay. The last line of
13 the quote that I referred to says:

14 "This approach..." and they are talking
15 about taking out the mandatory setting of opening sizes
16 in the regulation and leaving it to each national
17 forests to determine that. It says:

18 "This approach would allow more
19 flexibility to change as the scientific
20 knowledge continues to evolve."

21 Do you think that if the absence of a
22 regulated clearcut limitation provides or has that
23 result that that's a good thing?

24 A. I agree with the statement. I also
25 believe that clearcut size will remain in issue. It

1 might be social/political, but it is very real in the
2 United States. People do not like clearcuts and that's
3 a reason that clearcut limitations were made in the
4 regulations.

5 They finally resorted to that because the
6 agency didn't seem to get the message. So finally they
7 they said: Okay, you guys, we are going to cut you off
8 right there. A committee of scientist, however,
9 including Dennis Teeguarden were among that group that
10 did that. So they were within the range of good
11 forestry.

12 Q. Okay. Dealing with that
13 social/political concern, where people don't like the
14 clearcuts, am I correct that the concern about
15 clearcutting that led to the whole -- all the
16 regulations arose in a national forest in the eastern
17 United States, the Mononghela?

18 A. That was one of two national forests
19 that that became a real issue.

20 Q. What was the other one?

21 A. The other was the Beaverhead -- or
22 the Lolo, I think it was. The Bitterroot, excuse me,
23 the national forest in Montana and that was probably
24 the first concern and that was kind of an RPA time.

25 Q. Sure.

1 A. And then the Mononghela came along
2 about the time that the National Forest Management Act
3 along.

4 Q. What's the topography on those units?

5 A. The Mononghela is relatively flat,
6 rolling country. The Bitterroot is mountainous. It is
7 a smart part of the Rocky Mountains. It is not steep
8 in particular, but it is, you know, up to 30 per cent
9 probably down to flat.

10 Q. Okay.

11 MR. FREIDIN: I could just have one
12 moment, Madam Chair.

13 Q. Could you take out Exhibit 1753.
14 These are your overheads. It is the second page, the
15 one where you --

16 A. The organization?

17 Q. No, the second page where you
18 indicate how the amount of clearcutting and partial
19 cutting has been changed from 1989-1995 to 2040.

20 A. (indicating)

21 Q. You don't have a hard copy?

22 A. I probably do. You say that the
23 source of this document is the 1990 RPA Report for the
24 United States Forest Service, page 6-13.

25 I had a real problem with numbers. I

1 have looked -- first of all, maybe we can mark as the
2 next exhibit the document entitled - they are excerpts
3 - The Forest Service Program for Forest and Rangeland
4 Resources: A Long-term strategic plan, and the
5 excerpts are pages 5-33, 6-13, 6-14, 6-17 and pages 2
6 and 9 of the glossary.

7 MADAM CHAIR: This will be Exhibit 1792.

8 ---EXHIBIT NO. 1792: Excerpts from a document entitled
9 The Forest Service Program for
10 Forest and Rangeland Resources:
A Long-term strategic plan,
consisting of seven pages.

11 MR. FREIDIN: Q. Now, the 6-13 of the
12 exhibit I guess is in acres?

13 A. Yes, it is in thousands of acres.

14 Q. Thousands of acres. You have in
15 Exhibit 1753 is the difference for the numbers for the
16 three years referred to as a result of converting
17 thousands of acres to thousands of hectares?

18 A. Using the 2.47 factor, yes.

19 Q. Okay, thank you. I am more
20 comfortable with acres.

21 A. Whichever you feel best.

22 Q. Could we turn to the glossary and
23 page 9 and there is a definition of partial cut.

24 A. Right.

25 Q. It says:

1 "Any commercial tree removal other than a
2 clearcut; that is, one that takes only
3 part of the stand through such activities
4 as commercial thinnings and removal cuts
5 for shelterwood and seed trees."

6 I take that is the definition of partial
7 cut that was used for the purpose of the table on page
8 6-13 and your exhibit?

9 A. That would be my assumption.

10 Q. All right. Commercial thinnings, as
11 I understand it, is an activity which takes place
12 within a stand some time between its establishment and
13 before or -- and the harvest of rotation where you go
14 into the stand and you take out merchantible size
15 timber?

16 A. That's correct.

17 Q. Would you agree with me, Mr. Smith,
18 that that activity can and does occur on plantations or
19 on naturally regenerated stands - this is commercial
20 thinning now - which are being managed in accordance
21 with the clearcut silvicultural system?

22 A. Yes.

23 Q. That means that although you may see
24 a statistic which says you are going to have partial
25 cuts of "x", that figure then could be reporting

1 commercial thinning on an area of land which was being
2 managed in accordance with a clearcut silvicultural
3 system and which, therefore, might very well at
4 rotation be clearcut?

5 A. I think that's accurate to say.

6 Q. That's accurate to say?

7 A. Well...

8 Q. Is that what you said?

9 A. It is. It doesn't occur in every
10 area to be clearcut in the future, obviously.

11 Q. I agree with that.

12 A. I think as forestry becomes more
13 intensive and access is available, that certainly is
14 anticipated in the future to be more and more the rule
15 than not the rule.

16 Q. All right. Mr. Smith, Mark Twaine
17 said that there are three kinds of lies: there are
18 lies, there are damn lies and there are statistics and
19 that's what I am exploring here.

20 A. Yes. To my knowledge -- go ahead.

21 Q. Partial cuts, when we look at the
22 figures you gave us - and, again, no criticism against
23 you - these figures that show a trend, if we just look
24 at the statistics which say clearcutting is going to go
25 down and partial cuts are going to go up, the figures

1 for partial cuts because of the definition might very
2 well be going up because in the time period being
3 referred to it is expected that there is going to be a
4 lot of plantations coming on stream that you are going
5 to be going into and doing a bunch of commercial
6 thinning, fair enough, and if we are concerned about --
7 you nodded affirmatively?

8 A. It would be my judgment that that's
9 the case, yes.

10 Q. If what the concern is, if one says:
11 I am concerned about what kind of harvesting is going
12 to take place at rotation, are they going to clearcut
13 it or are they going to do something else, if you have
14 a figure that says there is going to be a lot of
15 commercial thinning going on before you get to
16 rotation, it might very well be that when all of those
17 areas that were being commercially thinned get to
18 rotation they are all going to be clearcut?

19 MADAM CHAIR: Well, what's the point, Mr.
20 Freidin? Are you saying there is a lot left to
21 clearcut at the end of the day?

22 MR. FREIDIN: That's right. The issue we
23 are talking about in the hearing, as I understand it,
24 is, should areas be clearcut at rotation. These
25 figures have been put in, they suggest that there is a

1 trend as indicated, down on clearcuts and up on partial
2 cuts.

3 I am suggesting, and I think the witness
4 is agreeing, and if you are not, Mr. Smith, you tell me
5 so, the witness is agreeing that these statistics do
6 not and cannot reasonably be relied on as an indication
7 that in the United States that the amount of
8 clearcutting at rotation is going to go down as
9 indicated on those based on those numbers for the
10 reason we have just described.

11 Q. Is that right?

12 A. No, I will agree with that.

13 Q. Why?

14 A. I do agree that commercial thinnings
15 might occur on an area that would later be clearcut. I
16 don't know how much of it.

17 I think from a biodiversity standpoint
18 commercial thinnings would be something we would want
19 to do to avoid that successional stage where the stands
20 closes in. In fact, it would perpetuate more the open
21 stages of early succession and the later stages of
22 succession that also provide openings.

23 So from a biodiversity standpoint, there
24 is some reason to do some commercial thinning and that
25 may be the reason and it may be that those areas are to

1 be clearcut, it may not be. I have no way of really
2 telling, but I can tell you this --

3 MS. SWENARCHUK: Mr. Freidin, allow
4 him --

5 MR. FREIDIN: I haven't said a word.

6 THE WITNESS: I would say this, in 1989
7 the report in hectares here it is 130,000 hectares and
8 it declines in the year 2040 to 94. Now, I have to
9 read that as literal. I don't see any --

10 MR. MARTEL: Could I ask a question,
11 though?

12 THE WITNESS: Yes.

13 MR. MARTEL: In 1995, the 244,000
14 hectares would be clearcut I think is what Mr. Freidin
15 is saying.

16 MR. FREIDIN: No, no.

17 MR. MARTEL: In the final analysis.

18 MR. FREIDIN: In the final analysis that
19 might be.

20 MR. MARTEL: At the end of the day.

21 MADAM CHAIR: But isn't your point, Mr.
22 Smith, if you look at these three columns, the partial
23 cut figure in 1989 of 230, more of that should be
24 captured in the clearcut figure of 107 if, in fact,
25 over time the commercial thinnings were resulting in

1 areas that were eventually clearcut and the same would
2 hold true for partial cuts of 244,000. In 1995 some of
3 that would show up the 2040 figures?

4 THE WITNESS: Yes.

5 MR. FREIDIN: Q. Whether that is the
6 case one would have to know what the age of the
7 plantations or the age of the stands being referred to
8 are?

9 A. Yes.

10 Q. That were used for the purpose of
11 calculating these?

12 A. I don't think that top line is
13 misleading or misrepresenting. I think there is a
14 trend towards -- away from clearcutting and it goes
15 from 130 in 1989 down to 94 in 2040.

16 I don't think you will look at the year
17 2070 and find a huge increase because all of a sudden
18 these thinnings.

19 Q. Let's look at it another way. I
20 mean, these are just statistics.

21 If you look at these partial cuts, it
22 says that the partial cuts are going up and the
23 clearcuts are going down. That doesn't mean that
24 clearcutting is being replaced -- these statistics
25 can't lead to the conclusion that clearcutting is

1 something which is being replaced by modified
2 harvesting. It might very well be that clearcutting
3 are going down because the public are so against it
4 that in fact there is going to be reduction in
5 clearcutting and a lot of this partial cutting is
6 commercial thinnings on areas?

7 A. No, I would say that it included
8 commercial thinnings.

9 Q. What includes commercial thinnings?

10 A. The partial cut includes commercial
11 thinnings. It also includes a trend away from
12 clearcutting towards partial cutting. I don't think
13 there is no any question about that.

14 You know, I don't have data right here to
15 prove it, but I would stake my reputation on the fact
16 that that is what the Forest Service is doing.

17 Q. Have you examined this RPA document
18 to in fact analyse how these numbers are in fact
19 derived?

20 A. No.

21 Q. Okay.

22 MR. FREIDIN: Madam Chair, this would be
23 a very convenient time to break. I might come to this
24 clearcut issue briefly and I have only one tab of
25 questions left.

1 I think we are going to finish well
2 within the day and have time for the re-examination so
3 Mr. Smith can go out and enjoy himself and Forests for
4 Tomorrow can go and celebrate the end of their case.

5 MADAM CHAIR: How long will you be, Ms.
6 Swenarchuk, in re-examination?

7 MS. SWENARCHUK: I would not be more than
8 half an hour, Madam Chair.

9 MADAM CHAIR: Are you going to need a
10 break between the end of Mr. Freidin's
11 cross-examination?

12 MS. SWENARCHUK: Only if the afternoon
13 explodes. I will be ready by the time we come back.
14 for everything up to now.

15 MR. FREIDIN: I promise not to have an
16 explosive cross-examination.

17 MADAM CHAIR: We will be back at 1:30.

18 ---Luncheon recess at 12:00 p.m.

19 ---On resuming at 1:35 p.m.

20 MADAM CHAIR: Please be seated.

21 Mr. Freidin?

22 MR. FREIDIN: Q. Mr. Smith, were you
23 aware that during the land use planning exercise that
24 the Ministry of Natural Resources was involved in in
25 the late 70's and early 80's that neither Industry nor

1 any other public interest group or individual was a
2 member of the planning team?

3 A. I was not aware one way or another.

4 Q. Thank you.

5 MS. SWENARCHUK: What planning team is
6 that?

7 MR. FREIDIN: The evidence is just what I
8 said, that there were no members of the public and
9 Industry was not a member of the planning teams which
10 prepared the land use plans, the land use guidelines
11 which have been presented in evidence in Panel 1 of the
12 Ministry's case in which -- that's the evidence.

13 I wanted to Mr. Smith to know if Mr.
14 Smith was aware of that and he is not?

15 THE WITNESS: Pardon me, you said -- you
16 prescribed certain dates.

17 MR. FREIDIN: Q. Well, all the land use
18 guidelines which are prepared, similar to the Fort
19 Frances District Land Use Guideline.

20 I am suggesting to you, sir, that either
21 the Industry nor any public interest group or
22 individual was a member of the planning teams which
23 prepared these documents, and I take it you are not
24 aware one way or the other whether that's correct?

25 A. No.

1 Q. Could you turn to Exhibit 1772,
2 Volume 2 of the Critique of Land Management Planning,
3 page 47.

4 ---Discussion off the record

5 MADAM CHAIR: Go ahead Mr. Freidin.

6 MR. FREIDIN: Q. Page 47. The top of
7 the page, in the second line it begins:

8 "It is now clear that for many forest
9 resources, there is no clear
10 understanding of how to assess
11 capability, nor are the complex
12 relationships and interactions
13 among the different resources fully
14 understood. In many instances, the
15 current state of scientific knowledge is
16 of little help to forest managers when
17 they try to assess the capability of the
18 resources, even when they have the
19 opportunity and funds to do so.

20 For such resources as wildlife habitat,
21 recreational opportunities or watershed
22 quality, there is no widely accepted
23 methodology on what to measure or how to
24 measure it, even if the funding were
25 available to do so."

1 Now, that's a conclusion that the
2 Conservation Foundation came to as a result of their
3 across the United States exercise.

4 Whether that may be untrue to some degree
5 in some individual forests, do you have any basis to
6 disagree with the observation made by the Conservation
7 Foundation as a general observation?

8 A. I don't totally agree with that.

9 Q. So when you --

10 A. I don't deny that's their opinion.
11 That is not my opinion. I don't believe it is that
12 absolute.

13 Q. Is your opinion based on your
14 experience in the western part of the United States?

15 A. It's my opinion based on the western
16 part of the United States and also, to some degree, as
17 a national program leader.

18 I agree that we don't fully understand
19 all relationships, but I don't agree that these current
20 state of scientific knowledge is of little help. I
21 simply don't find that to be true.

22 Q. All right. Anything else about the
23 statement that you would take issue with?

24 A. I would also say that there is some
25 methodology in inventorying such resources as

1 recreation opportunities, watershed quality.

2 I mean, my experience has shown that we
3 have used inventories in surveys and various scientists
4 and resource managers based on their own experience
5 with the given inventories can predict with some degree
6 of certainty, not absolute certainty, what kind of
7 response will occur with a road construction project, a
8 timber harvest or a water yield project, wildlife
9 habitat, what have you.

10 Q. All right. Accepting that for the
11 purposes of my question, would you, however, agree with
12 the conclusion of the Conservation Foundation that
13 although these kinds of measurements have been made in
14 the past, that there is no widely accepted methodology
15 on what to measure and how to measure it?

16 I think what they are suggesting --
17 contradict me if you wish, it seems to me they are
18 saying it has been done, but there still a controversy
19 going on about exactly how do you do it, how do you
20 measure it and what should you measure?

21 A. My experience is limited in dealing
22 with this, but I wouldn't characterize it as a
23 controversy. I would characterize it more as a degree
24 of uncertainty associated with any measurements.

25 There are methodologies that I think are

1 generally accepted, maybe a desire on the part of many
2 to have alternatives and more certainty in that.

3 Q. All Right. Could we turn to Exhibit
4 1786 where the interrogatories that I filed right at
5 the beginning of my cross-examination.

6 Do you have that Mr. Smith?

7 A. Yes.

8 Q. This was a question arising out of
9 page 31 of your witness statement which states:

10 "Retention of biodiversity is threaded
11 throughout an ecosystem --"

12 MADAM CHAIR: Excuse me, Mr. Freidin,
13 which interrogatory?

14 MR. FREIDIN: I'm sorry, interrogatory
15 No. 29.

16 MS. SWENARCHUK: MNR?

17 MR. FREIDIN: MNR 29, I'm sorry. I am
18 just in such a rush to finish, Mr. Smith.

19 THE WITNESS: Yes, I appreciate that.

20 MR. FREIDIN: Q. 29(b):

21 "Is the United States' Forest Service
22 approach to retaining biodiversity
23 uniform across all national forests."

24 And you answer:

25 "I doubt that there is uniformity of

1 approach in the United States Forest
2 Service in planning for biodiversity.
3 Consistency is emerging with this
4 experience."

5 It is item (c) I want to focus on.

6 "Do you agree that the United States'
7 Forest Service approach to retaining
8 diversity is one of the most
9 controversial aspects of the U.S. forest
10 system management system."

11 Your answer was:

12 "I am not sure that the US FS approach to
13 biodiversity planning is so
14 controversial. Many would not be able to
15 describe an approach. Certainly the
16 perceived requirements and results of
17 biodiversity planning and management are
18 controversial."

19 Could you explain to me what the
20 controversial aspects of the requirements and results
21 of biodiversity planning are and why they exist?

22 A. I think there is disagreement or at
23 least less than full agreement about what constitutes
24 biodiversity, what is necessary to maintain it and
25 still have human use of the resource as part of that

1 equation.

2 Forest supervisors and certain scientists
3 make assumptions about biodiversity, how to measure it,
4 how to monitor the effect of it, how important one
5 aspect of it is over another, and I just don't think
6 there is a body of knowledge and experience that is
7 available and tested to the point where there is
8 complete agreement and, therefore, some controversy
9 resolves around that.

10 Q. Okay, thank you. There was -- excuse
11 me one moment.

12 Let's deal briefly with the issue of
13 roads. You made a comment about the planning of roads
14 for a 10- to 15-year period in your evidence?

15 A. I may have.

16 Q. Okay. If you could turn to Exhibit
17 1754A which is the plan, Willamette National Forest
18 Land and Resource Management Plan, and page 191.

19 A. Would that be section -- what?

20 Q. I'm sorry, it is after Chapter 4.
21 Chapter 4 just seems to end and then the pages don't
22 seem to have any Roman numerals.

23 What we got at the end of the plan here
24 is it goes from 4168 and then it just turns to 169. I
25 think they are numbered chronologically. It is in the

1 very first portion anyway. Chapter 4.

2 MADAM CHAIR: Chapter 4. Which page?

3 MR. FREIDIN: Page 191.

4 MADAM CHAIR: Is the title on that
5 management area 10D?

6 MR. FREIDIN: That's right. It looks
7 like they left the (iv) off about 10 pages.

8 Q. This is management area 10D. As I
9 understand it, that would be one of the areas which
10 would be identified through your land use planning
11 exercise and then you have indicated here a desired
12 future condition for that area and you have a similar
13 description for all of the areas which are identified;
14 is that right?

15 A. That's correct.

16 Q. I note that in this section there is
17 a comment in the first full paragraph under the --
18 well, in the paragraph Desired Future Conditions. Five
19 line up from the bottom of the paragraph, it says:

20 "Access within an through the area will
21 be limited to trails."

22 A. Yes, I see it.

23 Q. I didn't see any other reference to
24 the kind of access which would be permitted or
25 prohibited in that area other than that one comment.

1 Is that the sort of description which
2 would be common in terms of the kind of roads which
3 would be permitted for the 10- or 15-year period of the
4 forest plan?

5 A. For this particular management area,
6 where the emphasis is on dispersed recreation,
7 semi-primitive, non-motorized use, that's true. There
8 is a section on facilities on page 194--

9 Q. Yes.

10 A. --pertinent to that particular
11 management area. It talks about existing roads and new
12 roads.

13 Q. Right. Let's go to another example.
14 Let's go to page 198. This is management area 10F.

15 Again, in the fourth last line under the
16 first paragraph of Desired Future Condition:

17 "Access within and through the area will
18 be limited to trails and existing roads."

19 We have similar comments or there are
20 comments again in relation to roads under Facilities?

21 A. That's correct.

22 Q. Let's me just go to one more through
23 a general forest area. Page 227. Do you have that?

24 A. Yes.

25 Q. Under the last paragraph, under the

1 heading Desired Future Condition, it states:

2 "The developed road system will provide
3 the access necessary to harvest timber,
4 transport the logs and tend stands of
5 growing trees. New construction and
6 reconstruction will be planned at the
7 lowest practical mileage and standard
8 required to provide for efficient
9 transportation of goods, safety of users
10 and the least effect on resource values.
11 Maintenance of these roads will be based
12 on these same consideration. Some of
13 this road system will be a low
14 maintenance state with no vehicle traffic
15 plan to project watershed conditions,
16 provide for wildlife needs and control
17 costs."

18 I don't see, in a quick look through the
19 rest of the management area details, any other
20 references to roads; is that correct?

21 A. I do not see a Facilities subheading
22 as we did in the others.

23 Q. All right. Now, what we have here,
24 at least in those three, is we have a short -- what I
25 would describe as a short narrative of the kind of

1 access and generally what might happen with access in
2 those areas.

3 Is that the kind of detail that one would
4 normally find in a forest plan dealing with roads
5 obviously for the period of the plan which I understand
6 is 10 to 15 years?

7 A. I think what you are seeing here
8 would be a fair example. There are also forest-wide --

9 Q. Forest...?

10 A. Forest-wide standards and guidelines
11 that apply to such things as roads and there are also
12 what is referred to as best management practices that
13 relate specifically to soil and water.

14 Q. I take it -- all right. The best
15 management practices would be something which would
16 come into play when you were in fact designing and
17 constructing the road to make sure that you weren't
18 having adverse effects on the environment?

19 A. That's right. So this specific
20 direction concerning management area 14A would be, in
21 effect, supplemented by these forest-wide standards and
22 and guidelines, as well as best management practices.

23 Q. All right. Am I correct, Mr. Smith,
24 that the forest-wide standards and guidelines that you
25 refer to do not deal with the issue of the exact

1 location of the road?

2 A. That's correct.

3 Q. Can you advise me, Mr. Smith, are
4 there any requirements at the project level, not during
5 land use planning, at the project level to plan and
6 document road location into previously unroaded areas?

7 A. I want to make sure I understand the
8 question.

9 Q. Okay.

10 A. If a previously unroaded area were
11 allocated to a purpose that allowed roads and, in fact,
12 required some sort of access--

13 Q. That's the scenario that I wish you
14 to address.

15 A. --then yes, there would be the same
16 forest-wide standards and guidelines. The facility
17 description under each management description, best
18 management practices and all of that would come
19 together in an interdisciplinary team effort in
20 locating, planning, designing that road.

21 ***change interdisciplinary to as shown

22 Q. All right. This would be the
23 interdisciplinary planning effort at the ranger
24 district level?

25 A. That's correct.

1 Q. Is there any requirement that when
2 you do the road planning at that level that you
3 identify alternate locations for the roads?

4 Let me tell you what I am getting. You
5 have got an area that is identified as a general
6 forest, you are going to do local operations in that
7 area and you have got a block of timber in an area that
8 has not been accessed so you have got to build a road
9 there.

10 Is there any requirement in your system
11 that when you are planning for the road or access to
12 that block that you have to show alternate locations of
13 roads going there and doing some sort of an assessment
14 as to whether one location or route is perhaps better
15 than the other such that you then choose a preferred
16 one? Is that a requirement?

17 A. That is a requirement.

18 Q. Where do we find that requirement?

19 A. It is implied in the environmental
20 assessment process which is provided for in the
21 National Environmental Policy Act.

22 That environmental assessment is what I
23 described as a more informal evaluation and development
24 of alternatives and evaluations leading up to a
25 project.

1 The so-called NEPA process requires that
2 that be accomplished and then a decision made as to
3 whether it represents a major federal undertaking that
4 will significantly affect the environment. If the
5 answer to that is yes, then a formal environmental
6 impact statement would be issued. If the answer to
7 that is no, then a simple environmental assessment
8 creating alternatives, evaluating alternatives, public
9 participation, et cetera, would suffice.

10 Q. All right. You have indicated that
11 this consideration of alternative locations is
12 something which is implied in the NEPA procedures.

13 Is it something which is actually done
14 for the construction of all roads in the forest, or is
15 it something which isn't done all the time?

16 I just got the general impression when I
17 read some materials that sometimes you don't show the
18 alternative locations. You might talk about the
19 standard to which the road might be built, you might
20 talk about the use of the road, whether it is opened or
21 closed and those would be alternatives, but it would be
22 it relation to one road, not in every case where you
23 would be building what we would call a primary or
24 secondary road, something that would be in existence
25 from 5 to 20 years, that every time you did that you

1 would show alternate routes.

2 I guess I am just asking --

3 A. The answer to that is yes, it would
4 be a requirement to show alternatives.

5 Q. Alternative routes?

6 A. Alternative routes. I can't say in
7 every instance the Forest Service has complied with
8 that, but that is the intent.

9 By the way, that would also include no
10 road at all because sometimes we access timber with
11 helicopters or balloons.

12 Q. Okay. You were referred by Ms.
13 Swenarchuk to Forests for Tomorrow term and condition
14 33(2). Would you turn to that, please.

15 You were asked about this term and
16 condition 33(2), (2)(a) I believe, and you indicated in
17 your response that you were in general agreement, but
18 that you had concern regarding certain constraints, but
19 then you went on to say but I'm not in Ontario.

20 Leaving aside the fact you are not in
21 Ontario or you are not from Ontario, what was the
22 concern you had in relation to the constraints?

23 First of all, what did you see as the
24 constraints which gave rise to your concern and why the
25 concern?

1 A. Okay. Unders (2)(a)(vi), it states:

2 "Whenever feasible roads shall be located
3 on flat land and in areas of stable soils
4 to minimize impacts on water courses."

5 The specific constraint I saw is not
6 having absolute value in the United States, at least,
7 is the term flat land.

8 Flat land is not a place where you have
9 alternatives we would normally build a road and that's
10 strictly from a drainage standpoint. I don't mean to
11 put it up on steep ground either, but when you talk
12 about absolutely flat ground it comes to my mind that
13 that road might have to be turnpiked in order to keep
14 it dry. If I had my choice I would build it in ground
15 that allowed water to get off of it.

16 That's the only concern I had in 33(2)(a)
17 and the reason I said I'm not in Ontario, maybe that's
18 the best place. My concern was drainage off the road.

19 Q. Okay, that's fine. Thank you very
20 much. I asked you yesterday if you could take some
21 time to assist me with the issue of roadless areas.

22 A. Yes.

23 Q. Can I begin by asking you to -- I
24 guess the best place to begin is ask you to deal with
25 my question.

1 Can you advise us what the similarities
2 and differences are between roadless areas as they
3 exist and are dealt with in the United States Forest
4 Service planning system and the roadless areas which
5 are being recommended by Forests for Tomorrow in their
6 draft terms and conditions?

7 A. It's probably easier for me to deal
8 with the dissimilarities because I think there is more
9 similar than dissimilar about it. So if you would
10 allow me do that.

11 Q. Yes.

12 A. The first dissimilarity I would say
13 is that, as I understand these terms and conditions
14 offered by FFT, is that they represent transition, a
15 transition process that would be used until their term
16 and condition 92 or something similar to that was
17 developed and implemented.

18 That's not quite the way we were doing it
19 in the U.S. We had a system of integrated planning
20 that we were about to use. We did in our so-called
21 roadless area review and evaluation -- remember I said
22 we pulled that out as kind of a preliminary advance
23 decision-making. This could be likened I suppose to
24 that to some degree. Anyway, that's the first
25 dissimilarity I see.

1 Part of the reason there are
2 dissimilarities I think is because of that. It is
3 viewed as a transition rather than kind of the final
4 process because I see here it is more a matter of sort
5 of protecting these roadless areas until such time as a
6 final determination is made is to their disposition
7 which is okay, I have no problem with that.

8 But in the U.S., the planning that was
9 applied to roadless areas really had as its end result
10 a determination of whether it should remain roadless
11 for all time and placed into wilderness or some other
12 kind of multiple use.

13 So in the U.S., system rather than merely
14 protect these areas pending a decision, we would try to
15 get right down to the allocation process of determining
16 the number of distribution, size, et cetera, these
17 areas and roads were not the only concern. This is
18 primarily dealing with roads. In the U.S., roadless
19 areas were -- we were concerned about roads and other
20 kinds of developmental activities.

21 Okay. Looking at 32(1)(a), there is a
22 list of sort of exceptions, you might say, that
23 roadless areas means areas which remain roadless and
24 which have not already been designated as areas of
25 concern or reserves, scientific interest, et cetera, et

1 cetera.

2 All of those exceptions were not used in
3 the U.S. system. If it had already been designated as
4 wilderness, certainly it was accepted, but if it was
5 designated as some other kind of special area or area
6 of concern, it was probably considered again as
7 roadless and whether it should be wilderness or some
8 other kind of mix of uses. This is kind of a small
9 difference, but it is a difference.

10 Okay. Moving on to 32(1)(b) at the top
11 of page 28. The term and condition here says:

12 "All roadless areas with any management
13 units shall be identified."

14 In the U.S. approach to this, they were
15 identified through an inventory, but also the
16 characteristics, physical and biological and so forth
17 were inventoried. Now, this may be what identified
18 means, I can't say that.

19 It goes further to say that there will be
20 an analysis of alternative corridors for primary and
21 secondary roads. In the U.S. system leading to the
22 final disposition of these roadless areas there would
23 not only be a consideration of roads, but all other
24 kinds of activities including timber harvest or develop
25 recreation or mining or grazing or whatever it might

1 be. So it was more of an integrated, full integrated
2 planning process.

3 Q. Just stopping you for a moment. Is
4 it fair to say that all of the efforts that were made
5 in the United States to identify these roadless areas,
6 whether it be part of what you call RARE 1 and RARE 2,
7 the decisions as to what do with areas which ended up
8 coming out of that process as roadless areas, that
9 those decisions are all decisions made at the land use
10 planning level or higher?

11 A. That's right. RARE 2 was in effect
12 pulling out a portion of this planning process in
13 advance, trying to decide the obvious; obviously they
14 should be wilderness or obviously they should be other
15 other multiple uses.

16 As I stated earlier, there was a large
17 middle section that couldn't make the call, so they
18 were remanded back to this. But the idea was to try
19 and resolve many of these roadless areas in advance so
20 we didn't have that hanging over us as a major
21 controversial issue. It was limited success I might
22 say.

23 Q. Okay. I interrupt you.

24 A. Under B, (i), the nature and extent
25 of the non-timber resources in the U.S. system, all

1 resources were considered including the timber
2 resources. So that wasn't limited to non-timber
3 resources in looking at these roadless areas.

4 Q. What sort of -- this is some
5 consideration of non-timber values made in the areas
6 during your land use planning?

7 A. Yes.

8 Q. What sort of considerations are we --
9 I guess as I read the material, your RARE 1 and RARE 2,
10 we ended up with sort of three areas, areas which came
11 out and they were made wilderness?

12 A. Yes.

13 Q. You would deal with them, therefore,
14 in your forest plan as wilderness and identify
15 restrictions, prescription or whatever knowing that
16 that was the use to which that area had been allocated.

17 There were other areas where they said:
18 These areas are allocated to other specific uses,
19 whether it is general forest, whether it is recreation
20 or whatever and, therefore, you would develop in your
21 land use plan prescriptions or direction as to how you
22 should deal with those; is that right? That was
23 another category?

24 A. Yes.

25 Q. Then you ended up as a result of the

1 exercise with this area called roadless areas?

2 A. No.

3 Q. Deferred decisions?

4 A. That's more correct.

5 Q. Out of these areas that were
6 identified as roadless there was a category left over
7 as deferred?

8 A. We refer to those as further
9 planning.

10 Q. Further planning. Now, the further
11 planning that was contemplated and which is being done
12 in relation to those areas, am I correct that the
13 planning is planning done at the land use planning
14 level; i.e., during the preparation or amendments
15 perhaps of your forest plans?

16 A. That's correct.

17 Q. All right.

18 A. So RARE 2 only made a decision to go
19 wilderness or non-wilderness with deciding exactly how
20 that area would be handled through the plan, and a
21 third category - you called it deferred, that's a good
22 description - it was further planning, but the issue
23 was, it still could go wilderness or it could go other
24 multiple uses. So you have three categories.

25 Q. All right. I interrupted you. Are

1 there some other dissimilarities?

2 A. The point I was trying to make under
3 (1) is that all the resource values were considered not
4 just the non-timber values.

5 All right. In (ii) --

6 Q. You are talking about B(ii)?

7 A. B(ii).

8 Q. Yes.

9 A. Essentially the same thing. In the
10 U.S. approach all forms of uses including wilderness
11 would have been considered at that point.

12 Q. Can you advise me, is the
13 determination on what to do with the roadless area made
14 in the context of the wilderness objective?

15 All right, when you are making it in the
16 context of the wilderness objective, do you look at the
17 extent to which wilderness objectives are -- the extent
18 to which wilderness objectives are already being
19 achieved through parts of the wilderness system such as
20 wilderness parks?

21 A. The answer to that is yes, we don't
22 use the term wilderness parks, but within our national
23 park system there are already designated wildernesss
24 and there are already designated wildernesses in the
25 national forest system. So the intent there, yes. We

1 consider that in light of what other areas are already
2 designated.

3 Q. Do you have in the United States any
4 preset percentage of the land base that has to be in
5 this wilderness category?

6 A. The Forest Service is not -- does not
7 have a percentage as goal, nor there is there anything
8 in the statutes that are a goal.

9 There are many interest groups and others
10 who feel that they are probably -- I think you could
11 talk to almost anybody and they will tell you about
12 what the range would be in their view when we reached
13 the point.

14 Q. All right. That discussion about
15 whether a range should be specified has been one of
16 discussion and decision in the U.S. Forest Service?

17 A. There had been discussion about it.
18 When we went through RARE 2, rather than establish a
19 percentage, we established basically four objectives
20 and sort of let the chips fall where they may.

21 We have had only limited success in
22 setting objectives about wilderness because they are
23 very subjective in value and it is hard to reach any
24 hard agreement among all parties about what the
25 objectives -- well, about whether we will know when

1 when get there. You know, are we through. There is a
2 lot of discussion about that.

3 Q. All right.

4 A. Okay. No. (iii), I just say yes to
5 that, that's similar.

6 No. (iv), yes, basically it's the same.

7 Q. I take it, however, in relation to
8 item No. (iv) where it talks about anticipated changes
9 in plant and animal species diversity in the management
10 unit, having regard to our earlier discussion about
11 whether diversity should be dealt with on something
12 other than a management unit level which is an
13 administrative boundary, that you might have some
14 concerns about that?

15 A. You would have concerns about not
16 doing it in isolation, yes. You can't avoid dealing
17 with biodiversity on a national forest or a unit, but
18 it has to be done in the context of a broader area.

19 MADAM CHAIR: Excuse me, Mr. Freidin,
20 what's the Board supposed to be getting out of this?

21 MR. FREIDIN: I am not too sure that I
22 can tell what the Board is going to get out of it now.

23 All I know is I can't make any
24 submissions to you regarding whether these terms and
25 conditions being put forward that Forests for Tomorrow

1 are reasonable or not unless I understand it and the
2 only person that has been put forward for me to
3 understand this is Mr. Smith.

4 I do not think that it would be
5 appropriate for me to sit down and have Ms. Swenarchuk
6 explain to me what the situation in the United States
7 because I want to find out from someone from the United
8 States Forest Service.

9 MADAM CHAIR: Is it your assumption that
10 all of these conditions are based on the American
11 experience?

12 MR. FREIDIN: No.

13 MS. SWENARCHUK: I would suggest other
14 members of the FFT team--

15 MR. COSMAN: Sorry, I can't hear you.

16 MS. SWENARCHUK: --could indeed provide
17 some assistance to Mr. Freidin if the question had been
18 asked.

19 MADAM CHAIR: You had long enough, both
20 of you, to talk about it.

21 MR. FREIDIN: We talked about this issue.

22 MADAM CHAIR: I bet. I don't think the
23 Board wants to go through this line by line when we are
24 not getting anything out of it.

25 Are you trying to ask Mr. Smith what is

1 in here that has been taken out of the U.S. experiene?

2 MR. FREIDIN: Well, they have dealt
3 with -- well, there is that, and if there is anything
4 about these particular terms and conditions which is
5 based on his experience he has -- he doesn't understand
6 or has some question about because it is different and
7 I think he is going through the dissimilarities.

8 MADAM CHAIR: Do you think we can speed
9 it up, Mr. Smith?

10 THE WITNESS: Madam Chair, I think I have
11 a solution.

12 MADAM CHAIR: What's your solution?

13 THE WITNESS: It would be to kind of
14 generally tell you what the major differences are
15 without going line by line. I think I can do that for
16 you.

17 MADAM CHAIR: All right. Fine, go ahead.

18 THE WITNESS: I go back to my first
19 comment that this is a transition direction that I
20 think would be very similar to what the U.S. would do.

21 It is primarily concerned with roads.
22 The U.S. system would probably broaden that to more
23 than roads, other kinds of developmental activities.

24 I would also say that the U.S. does not
25 have a percentage target as such. We discussed that

1 beforehand.

2 MADAM CHAIR: And what is your opposition
3 to a percentage target?

4 THE WITNESS: No one could really agree
5 that a percentage would be a very useful tool. It
6 would depend on what -- take 12 per cent. I don't know
7 whether our system will come out 12 per cent or
8 something else. We had to kind of break that out into
9 what we wanted to see.

10 We described it as, what does the
11 wilderness preservation system look like when we were
12 through, and we described it in more characteristic and
13 distribution terms and let the percentages fall where
14 they may.

15 That's the objection, is we didn't want
16 to set 20 per cent because, you know, 20 per cent could
17 give you a rectangle when you really wanted a square.

18 MADAM CHAIR: So you have no idea where
19 this percentage came from and you nothing to say about
20 that?

21 THE WITNESS: I had nothing to do with
22 that. I am just saying that we didn't use that as a
23 means.

24 Now, it might be a ballpark number to
25 shoot at to have reserved so that when the time comes

1 to provide integrated planning to designate wilderness
2 you have got a world to work in that would be adequate.

3 I think a judgment call could be made in
4 that respect. We didn't feel we needed that because we
5 jumped right into, you know, specific objectives that
6 would shape a system the way we perceived it should be.

7 That's really about all I need to say
8 about the differences. You know, I don't think it is a
9 bad approach for a transition period. It certainly
10 protects the areas and makes them available for a
11 decision later.

12 MR. FREIDIN: Could I just ask two
13 questions of clarification then of Ms. Swenarchuk.

14 Can you confirm for me, because I have
15 not received this information from you, are these
16 provisions indeed and expected to be a transition
17 provision until your term and condition No. 92 comes
18 into play?

19 Secondly, is it FFT's interpretation of
20 these terms and conditions that these areas are only to
21 be protected until the areas are -- until final
22 disposition of the area?

23 MS. SWENARCHUK: Well, first of all,
24 virtually all the terms and conditions are transitional
25 pending whatever would develop out of the new planning

1 process developed through condition 92.

2 Presumably, many of these conditions
3 would be carried over into a new planning process that
4 is clearly for the setting of directions and are the
5 directions that Forests for Tomorrow favours, but I
6 think Mr. Smith - who, by the way, was not, as I
7 recall, involved in drafting this proposal - has
8 described it accurately.

9 MR. FREIDIN: Can you advise whether in
10 the -- either the transition period or in the new
11 planning process that you are perceiving that these
12 areas would in fact be areas which could protected
13 until final disposition of them?

14 MS. SWENARCHUK: Well, I think perhaps
15 this is a discussion you and I could have privately.

16 I don't know if it is that useful to the
17 Board, but if you look at Section 32(1)(d), it
18 indicates:

19 "There shall be a presumption that
20 roadless areas shall remain roadless and
21 managed as wilderness by the MNR without
22 limiting the generality..." and it goes
23 on to discussion the conditions under which primary and
24 secondary roads could be planned.

25 MR. FREIDIN: Q. Do you have roads in

1 your wilderness areas in the United States?

2 A. By definition, wilderness in
3 roadless. However, in the eastern part of the United
4 States where wilderness is limited, Congress has chosen
5 to designate certain areas with roads. Those roads
6 have subsequently been closed and the restoration
7 process embarked on.

8 Q. Okay. I think that's enough.

9 Could we move on to another area. Could
10 we look at page 18 of your witness statement. You made
11 a comment at the bottom of page 18 in relation to the
12 subject matter of monitoring in item No. 10 where you
13 say:

14 "Monitor and evaluate selected ongoing
15 management activities."

16 Could you indicate to me why you have
17 indicated that this management activity should occur on
18 selected activities as opposed to all activities?

19 A. This is language that came right out
20 of the Forest Service description of the process. It
21 is not necessarily my words, but what they mean there
22 is that you can't monitor everything you do. You would
23 end up spending more on monitoring than on managing the
24 forest. So it is important to develop a monitoring
25 plan that samples the activities.

1 Q. Can you turn to Volume No. 2 of the
2 Critique of Land Management Planning, Exhibit 1772 at
3 page 60.

4 In relation to this subject matter of
5 monitoring, I would like to direct your attention to
6 the third full paragraph. There are some general
7 comments made at the beginning, including the fact that
8 there is no special funding for monitoring, and the
9 comment that I would like to direct your attention to
10 is the last four lines, it says:

11 "The connection between monitoring and
12 individual projects is a loose one. Most
13 monitoring needs such as whether water
14 quality standards or wildlife habitat
15 needs are being met apply to much larger
16 areas of a forest than can be addressed
17 in a single project."

18 Do you agree with that proposition?

19 A. As a general matter I do.

20 Q. Why is it an accurate statement from
21 your point of view?

22 A. In terms of individual projects,
23 let's take water quality for example, an individual
24 project has some effect on the water, but if you look
25 at an entire watershed, for example, and measure the

1 effects of several projects, say roads, timber harvest
2 or ski area development or what have you, the
3 cumulative effect can be considerably more than simply
4 looking at a particular project.

5 Let me give you an example. What might
6 appear to be an acceptable sedimentation level from a
7 timber harvest area or a particular road, when it is
8 collected in an entire drainage with all the other
9 project ends up downstream with an unacceptable
10 sedimentation load.

11 So I think it's accurate to say you don't
12 just look at each individual project and hope within
13 the constraints of that project it is acceptable
14 because that project added to many other projects can
15 lead to a much different impact on a particular
16 resource.

17 MR. MARTEL: Is that all types of
18 monitoring because I think you outlined three different
19 types?

20 Would you have the three different types
21 as you have enunciated them only beyond the single
22 project level or would you monitor anything at a
23 project level?

24 THE WITNESS: I think sometimes you have
25 to monitor a particular project in order to measure the

1 response of, say, a silvicultural prescription. You
2 look at it to see if reforestation occurs or undue soil
3 damage occurs. So it's a mix of both.

4 MR. FREIDIN: Q. Last question in
5 relation to monitoring. You indicated that in the
6 United States that monitoring is done by U.S. FS staff
7 and the public.

8 Could you just give us some insight as to
9 how the public are involved in monitoring?

10 A. A couple of ways. We are just
11 getting into the monitoring, you know, phase of these
12 plans, but I think it's probably going to be common to
13 contract with, say, a university to monitor and measure
14 the effectiveness of some of our biodiversity
15 prescriptions.

16 I think it's going to be a matter of
17 inviting the public out to look at a timber harvest
18 area that is applying some of this direction and
19 getting their subjective judgment; are we getting where
20 we are supposed to be getting.

21 Q. Thank you. You referred to site
22 conversion in your evidence. What's your definition of
23 site conversion?

24 A. Site conversion would be changing the
25 vegetative type from what is naturally there to

1 something else. For example, in my area of the world,
2 you might have a mix of alder and Douglas fir and you
3 decide you don't want alder there because it is a less
4 marketable species and convert the whole thing to
5 Douglas fir.

6 Q. So you are saying get rid of all the
7 alder?

8 A. All the alder. In the practical
9 sense you can't do that, at least not in the ecosystems
10 we are dealing with. You can't create a monoculture.
11 He just don't have the capability of doing that, but we
12 don't go about changing one vegetative type to a
13 completely different type that is not naturally there.

14 Q. Right. So if you had a situation
15 where you had Douglas fir 60 per cent and alder was 40
16 per cent and you switched them around so it was 60/40
17 the other way, is that site conversion by your
18 definition, or is that the kind of change that gave
19 rise to the concern you indicated in your evidence?

20 A. No, I think it's more a matter of
21 something to a greater degree of conversion than simply
22 swapping that 60/40.

23 I think it has to be more or less a
24 purposeful type of thing and not just incidental to the
25 process.

1 Q. Okay, thank you. A few questions on
2 the subject matter of appeals.

3 If I might, I would like to - I think
4 this will be my last exhibit - file as the next exhibit
5 United States Forest -- it is the Code of Federal
6 Regulations Part 217, 36 CFR, Chapter 11, part 217
7 entitled Requesting Review of National Forest Plans and
8 Project Decisions.

9 MADAM CHAIR: Is there a date on this,
10 Mr. Freidin?

11 MR. FREIDIN: The copy that I gave you
12 comes out of the edition which was revised as of July
13 the 1st, 1989.

14 MADAM CHAIR: That will be Exhibit 1793.

15 ---EXHIBIT NO. 1793: Code of Federal Regulations Part
16 217, 36 CFR, Chapter 11, part 217
17 entitled Requesting Review of
National Forest Plans and Project
Decisions, dated July 1, 1989.

18 MR. FREIDIN: Q. This particular part of
19 the regulation does deal with exactly what the title is
20 and that is, how one goes about requesting review of
21 decisions made either during the preparation of your
22 national forest plan or at the project level?

23 A. Yes.

24 Q. It deals with a matter, Mr. Smith,
25 that is of some interest, I believe, here and the

1 section I would like to refer your attention to is on
2 page 39 of the document, at the bottom, it is Section
3 217.10 entitled Stays.

4 Before we get into the details, sir, as I
5 understand it, this basically indicates what happens if
6 somebody wants to stop the implementation -- first of
7 all, either the preparation and approval of a forest
8 management plan or stop the implementation of a
9 project; am I right?

10 A. I would say it applies primarily to
11 the latter.

12 Q. Okay. Let's just go through this.

13 (a) says:

14 "Request to stay the approval of land and
15 resource management plans prepared
16 pursuant to 36 CFR Part 219..." and
17 that's the planning regulation we have been dealing
18 with for the last few days; is that correct?

19 A. Yes.

20 Q. "...shall be granted. However
21 requests to stay implementation of a
22 project or activity included in such a
23 plan will be considered as provided for
24 if paragraph (b) in this section."

25 Paragraph (b) says:

1 "Where a project or activity
2 would be implemented before an appeal
3 decision could be issued, the Reviewing
4 Officer shall consider written requests
5 to stay implementation of that decision
6 pending completion of the review."

7 It then sets out a number of obligations,
8 am I correct, on the person who is requesting a stay of
9 the implementation?

10 A. Yes.

11 Q. And it describes the requirements
12 imposed on that person at the bottom of page 39 and
13 over on to page 40, the left-hand column until you get
14 down to the small (d) which is about a third or a half
15 of the way down the page; is that right?

16 A. Yes.

17 Q. It includes a requirement that the
18 person whose requesting the stay must, in item No. 3

19 "Provide written justification of the
20 need for a stay which at a minimum
21 includes the following items..."

22 I am not going to take the time to read
23 through them into the record. Do you agree, sir, that
24 those are reasonable provisions to be imposed on some
25 person who wishes to in fact have a stay of the

1 implementation of activities?

2 A. Yes.

3 Q. Could you turn to the last section in
4 these regulations on page 43, at the bottom left,
5 paragraph 217.18, Policy in Event of Judicial
6 Proceedings.

7 Now, I understand that -- well, it
8 states:

9 "It is the position of the Department of
10 Agriculture..."

11 That's the U.S. Forest Service for all
12 intents and purposes?

13 A. That's the --

14 Q. In the context of forest plans?

15 A. Yes.

16 Q. "...that any filing for Federal
17 judicial review of a decision subject to
18 review under this part is premature and
19 inappropriate unless the plaintiff has
20 first sought to invoke the exhaustive
21 procedures available under this part.

22 This position may be waived upon a
23 written finding by the Chief."

24 Do you believe that that is -- I mean,
25 that's what the regulations say. As a matter of your

1 person view, is that a provision that you agree with?

2 A. I basically agree with that. I think
3 the agency should have the opportunity to
4 administrative try to remedy a challenge prior to the
5 time it gets into the courts.

6 Q. As I read this, really it says that
7 that's the general approach that the Forest Service
8 will take and I assume that the purpose, or a purpose
9 of least, of the last sentence:

10 "This position maybe waived upon a
11 written finding by the Chief", is saying
12 the Forest Service might in its own discretion believe
13 that it is appropriate to in fact allow the appeal to
14 proceed before all of the internal mechanisms have gone
15 through, and in that situation they can waive this
16 requirement that the internal appeal mechanisms, the
17 planning processes and that sort of thing be exhausted?

18 A. Right. I think the chief could make
19 a decision that this is an issue that could be resolved
20 better in the courts.

21 Q. Thank you. Could you please turn
22 to -- can you get out Volume 1, Exhibit 1790.

23 In fact, Madam Chair, maybe I can speed
24 this up. I am not too sure whether you can highlight
25 the exhibits. These are very short excerpts.

1 Will you agree with the following
2 comments made in Volume 1 at page (v):

3 Success is not necessarily measured by a
4 lack of controversy when you are talking
5 about planning.

6 If you feel comfortable dealing with the
7 actual section let's do it. Go to Volume 1, (v), it
8 says in second last paragraph --

9 A. I have got it.

10 Q. "Success is not necessarily measured
11 by a lack of controversy. Addressing
12 conflicts often leads us to much greater
13 recognition and understanding of
14 differing views, issues and controversies
15 can be the stepping stones to building a
16 collective vision about the national
17 forest."

18 Do you agree with that?

19 A. Yes.

20 Q. I don't think you are going to have
21 trouble agreeing with -- these are the last few
22 questions I have for you.

23 A. Good.

24 Q. Volume 11, page 24. It is Exhibit
25 1791. Volume 11 at page 24 of that document.

1 In the second paragraph under the heading
2 Alternative Emphasis and Polarization, four lines down
3 it says:

4 "Polarization is undoubtedly an intrinsic
5 feature of a process that emphasized the
6 development of a comprehensive and wide
7 ranging set of alternatives. Tinkering
8 with terminology will only marginally
9 reduce polarization if at all in the
10 absence of fundamental change in the
11 approach to planning and decisionmaking."

12 Do you agree again that polarization is
13 undoubtedly an intrinsic feature of a process that
14 emphasizes the development of a comprehensive and wide
15 ranging set of alternatives?

16 A. I hadn't thought about this, but I
17 don't think I totally agree with that.

18 Q. Okay.

19 A. I think I would say that polarization
20 more is likely to occur when you have two extreme
21 alternatives. If you give people something in the
22 middle to look at it, there is probably going to be
23 less polarization. That's my own kind of gut feeling
24 about it.

25 Q. Okay. I am just going to go back to

1 this appeal matter. I left run reference out.

2 In relation to the appeal issue, can you
3 go to the proposed regulations, Exhibit 1781, page
4 6514.

5 MS. SWENARCHUK: Page again?

6 MR. FREIDIN: 6514.

7 Q. Do you have that?

8 A. Yes.

9 Q. Bottom right-hand column, the heading
10 Changes in Administrative Appeal Procedures."

11 A. Yes.

12 Q. I want to go over to the next page,
13 6515, second line, it says:

14 "Although the preliminary regulatory text
15 does not contain any change to appeal
16 procedures, the Agency is interested in
17 receiving comments from the public
18 regarding the administrative appeals
19 process."

20 It goes down about ten lines in the next
21 paragraph and indicates by way of an example:

22 "There are concerns that some appellants
23 bypass opportunities to resolve issues
24 prior to issuance of a decision, but then
25 use the appeal process to cause

1 intentional delays in project
2 implementation."

3 I only bring this to your attention, sir,
4 because I think this was a question asked by the Board
5 as to whether that happens in the United States and
6 apparently this is an indication that it is certainly
7 the view of the United States Forest Service that it
8 does, and do you have agree with that?

9 A. I agree.

10 Q. I take it then really what is
11 happening here is notwithstanding the provisions of the
12 appeal regulations that we went through, that there is
13 still a concern about the appeal procedures being
14 abused and for that reason they have asked for
15 comments?

16 A. Yes, it is an ongoing issue. It is a
17 matter of balancing rights against responsibilities
18 without, you know, falling over either way.

19 Q. All right. Can we look while we are
20 still on that particular document, can you turn to page
21 6509. Do you have that?

22 A. Yes.

23 Q. You will see on the left-hand column
24 there is a heading Background, and by way of background
25 if we go to the middle column and we go into the very

1 first full paragraph, it states, starting about six
2 line downs in the middle:

3 "It is apparent that many controversies
4 linger or remain unabated. Even though
5 procedural improvements can enhance
6 various aspects of the planning process,
7 there remains fundamental disagreement
8 within our society about management of
9 national forest lands. The issues
10 surrounding national forest system
11 management require that difficult choices
12 be made where there are no universally
13 accepted answers. In this high stakes
14 and emotion filled arena, forest planning
15 cannot be expected to resolve all
16 the differences. This is not necessarily
17 a reflection of inadequacy of forest
18 planning, but rather an indication of the
19 importance the American people place on
20 the national forest system and its
21 resource."

22 Is that a statement you agree with?

23 A. Yes.

24 Q. Would you assume, sir, that that is
25 probably a statement which could be true in any

1 jurisdiction where forest management planning takes
2 place and the the public are concerned about it?

3 A. It would surprise me if it wouldn't
4 apply everywhere.

5 Q. Thank you very much.

6 MR. FREIDIN: Madam Chair, those are my
7 questions.

8 MADAM CHAIR: Thank you, Mr. Freidin.

9 Ms. Swenarchuk, you said you would be how
10 long in re-examination?

11 MS. SWENARCHUK: I would say not more
12 than half an hour and possibly considerably less.

13 MADAM CHAIR: Is the 20-minute break long
14 enough or would you like a few minutes?

15 MS. SWENARCHUK: I would like the break,
16 but I don't need more time than that.

17 MADAM CHAIR: All right. We will break
18 for 20 minutes.

19 ---Recess at 2:45 p.m.

20 ---On resuming at 3:05 p.m.

21 MADAM CHAIR: Please be seated.

22 Ms. Swenarchuk?

23 RE-DIRECT EXAMINATION BY MS. SWENARCHUK:

24 Q. Mr. Smith, I would like to turn first
25 to Exhibit 1790, that's Volume 1 of the Land Management

1 Critique, and your attention has been directed to
2 several passages in this document and I would like to
3 direct it to a number of other issues.

4 On page 19, please. I think this is an
5 issue that the Board has not heard of in these specific
6 terms before. In The middle of the page there is a
7 paragraph in which the heading on the left says Build
8 Effective Human Relations. The last line of the two
9 paragraphs opposite says:

10 "Ideally, the public will become part of
11 the solution. However, for them to want
12 to be part of it, support the solution,
13 people in the agency need to invest a lot
14 of time and loving care in building
15 relationships."

16 Do you agree with that statement?

17 A. I certainly do. It has been our
18 experience.

19 Q. Then the next paragraph, again a
20 formulation that I think the Board has not heard
21 before. The heading says Be Sensitive to People's
22 Emotions, and it reads:

23 "During the last decade of planning we
24 tried to meet emotional responses with
25 technical solutions. This did not work

1 for several reasons. We misinterpreted
2 the emotional aspect of the responses or
3 we did not address the underlying issues
4 because our technical tools did not
5 fit, or we ignored the messages embedded
6 in the emotions because we did not
7 understand them. The Forest Service
8 needs to improve its sensitivity to the
9 emotional aspects of issues. The agency
10 needs to recognize that emotional input
11 and response are valid pieces of
12 information from people who are affected
13 by forest decisions."

14 What's your view of that statement?

15 A. I tend to agree with that. I think
16 foresters and resource scientists like to deal in
17 scientific fact, yet people are not so inclined. They
18 tend to have feelings about things.

19 It is sort of like dealing with your
20 teenage children. You can use all the rationale you
21 want, but if they feel one way or another that's
22 important to them. The public is a little bit that way
23 when it comes to scientific forestry information. They
24 don't disregard the fact, but they still like to have
25 their feelings honoured. So I totally agree with that.

1 Q. Okay. I would like to look for a
2 moment at Exhibit 1781 now, the excerpts from the
3 Federal Register and specifically at page 6527.

4 You and I discussed in your direct
5 evidence your opinion that clearcut size limits, you
6 said, had a positive role in forest management in the
7 U.S. and the Board has been directed now to these
8 proposed rule changes.

9 I would like to look again at the last
10 paragraph, in the left-hand column at the bottom. This
11 is on page 6527 and this is presumably with respect to
12 the proposed rules.

13 "Paragraph (f)(3) establishes provisions
14 for maximum size of harvest areas. This
15 is in response to..." and it mention the
16 sections of the NFMA.

17 Then:

18 "Limitations presently issued in regional
19 guides would be located in forest plans."

20 Now, would those be -- to your
21 understanding, would those be the limitations such as
22 we discussed from the regional guide, Exhibit 1755, at
23 page 3-7 of that guide?

24 A. That would be my understanding, yes.

25 Q. So your understanding then is that

1 this would now be transferred into the plans
2 themselves; is that right?

3 A. That's the way I read it.

4 Q. Okay. "The size limitations
5 identified in the existing regulation
6 would not be included in paragraph
7 (f)(3)... " and then there is a
8 discussion of the new perspectives in forestry effects
9 and you provided Mr. Freidin with your interpretation
10 of what the new forestry perspective would mean here
11 and that essentially, you said, was the concern about
12 forest fragmentation?

13 A. That's certainly a major issue in new
14 perspectives in forestry or new forestry as it is
15 referred to.

16 MR. FREIDIN: I think the question -- I
17 did not ask him to explain new forestry.

18 I asked him, in light of the changing
19 scientific opinion on this topic, I said, could you
20 explain to me what that changing scientific opinion was
21 and he said it was fragmentation.

22 I don't think it would be proper for us
23 to hold a discussion of new forestry for re-examination
24 purposes. If she wants clarification of that answer,
25 that's fine.

1 MADAM CHAIR: Was the answer the Board
2 heard.

3 MS. SWENARCHUK: I wasn't going any
4 further with that. I think the sections are related to
5 each other, scientific conclusions and new forestry
6 perspectives.

7 Q. In any event, I want to ask, Mr.
8 Smith, to your knowledge are there any other factors
9 operating of this change in the regulation with regard
10 to size limits?

11 MR. FREIDIN: I don't think that's a
12 proper question, Madam Chair. I asked him about the
13 clearcut size limitation. Here he was asked in direct
14 examination to give any explanation he wanted to,
15 Forests for Tomorrow wanted as to what the trend in the
16 United States was.

17 He may give evidence now which I haven't
18 dealt with and it may be new. I have no chance to
19 cross-examination on it. That is not proper
20 re-examination, in my opinion.

21 MS. SWENARCHUK: It is not improper
22 re-examination. The issue of the removal of the
23 legislative size limit and substitution of regional
24 guide limits in the plans is a subject that was
25 introduced in cross-examination. It was not part of

1 his direct testimony.

2 I think I am entitled to clarify that
3 subject and that's precisely what this one question is
4 directed to do.

5 MADAM CHAIR: Are you referring to the
6 standards that were introduced by Mr. Cosman with
7 respect to differences in clearcut size because of
8 wildlife management?

9 MS. SWENARCHUK: No, I am referring to
10 the evidence introduced here that the size limitations
11 identified in the existing regulation would not be
12 included in paragraph (f)(3) of the proposed rule.

13 My understanding is that Mr. Freidin
14 explored one purpose for that change and I am asking
15 Mr. Smith whether as an expert he is aware of any other
16 reason for that change occurring.

17 MR. FREIDIN: I repeat my position. That
18 is introducing new evidence. This regulation indicates
19 a particular explanation. I asked him if he could
20 explain what it was. For him now to go on and be
21 asked, is there something else that might be a reason
22 for the change, we don't know where he is going to go.

23 You have my submissions and I would ask
24 for a ruling on that, Madam Chair.

25 MADAM CHAIR: Well, let the Board get

1 something straight first.

2 We are on page 62...

3 MS. SWENARCHUK: 6527.

4 MADAM CHAIR: 6527 and I don't believe
5 the Board has seen this reference before.

6 MR. FREIDIN: Yes, I quoted starting at
7 the fourth line of the left-hand column over to about
8 15 lines down in the middle column which ends:

9 "As the scientific knowledge continues to
10 evolve..."

11 MADAM CHAIR: All right. We do have it
12 marked that we went to the next column, but it wasn't
13 clear to us before that the proposed regulation is one
14 in which the clearcut limit size is now in effect in
15 the United States, be they 40 acres or 60 acres, will
16 not show up in the new regulations.

17 That wasn't clear to the Board. We had
18 focused, Mr. Freidin, on the evidence with respect to
19 fragmentation and what that meant.

20 MR. FREIDIN: Right.

21 MADAM CHAIR: Not the sentence to the
22 effect that they are going to take out quantitative
23 numbers out of clearcut size in the new regulations.

24 The evidence you were getting from Mr.
25 Smith had to do with the effect of the scientific

1 underpinnings of the changes to the regulation and his
2 opinion had to do with the fragmentation issue.

3 MR. FREIDIN: Right. I read it all --
4 yes.

5 MADAM CHAIR: I'm sorry, we were
6 concentrating on the latter part.

7 MR. FREIDIN: That's right. But it was
8 because they had done way from the size limitation as a
9 matter of regulation that led me to say: All right,
10 that was the reason they did it, can you explain the
11 reason a little bit more.

12 MADAM CHAIR: Is there anything you would
13 have to add, Mr. Smith, to what you had said now that
14 the Board understands clearly?

15 You are saying your reasoning or your
16 opinion of why clearcut limit size wouldn't show up in
17 new regulations had to do with some scientific work
18 that's going on now with respect to fragmentation?

19 THE WITNESS: I can offer an opinion that
20 would expand on fragmentation, other things that would
21 lead me to believe -- or lead me to just judge why they
22 dropped it. I could do that.

23 MADAM CHAIR: Mr. Freidin, obviously the
24 question you were getting at we only paid attention to
25 part of that.

1 MR. FREIDIN: If the Board feels...

2 MADAM CHAIR: If Mr. Smith -- the Board
3 is going to give you leave to put another question to
4 Mr. Smith if there is something he is bringing up
5 because we didn't understand clearly the wording of the
6 proposed regulations.

7 MR. FREIDIN: Thank you.

8 MADAM CHAIR: Mr. Smith?

9 THE WITNESS: In my opinion, dropping the
10 clearcut limitation was partially due to fragmentation
11 and the effect that small units, if implemented a
12 certain way, could have on fragmentation.

13 I think it also reflects growing
14 confidence in the Forest Service that the Forest
15 Service based on its own success in smaller units is
16 not likely to go beyond the size that the public feels
17 is reasonable, and the introduction of new forestry
18 that the Forest Service now is practising in these
19 clearcut areas also reduces the tension that the public
20 sees in clearcut size.

21 Another thing is that I think this
22 recognizes that there are varying conditions, that the
23 national forest of the Pacific northwest region, for
24 example, vary a good deal and, therefore, it would be
25 better not to set an absolute. It would be better to

1 set standards for each set of circumstances.

2 Lastly I would say that there is some
3 comfort level in that because that whole process of
4 deciding what the limits is the subject of an
5 environmental impact statement, a very formal process
6 by which alternatives are cast up, evaluation is made
7 and the public has a chance to review and be apart of
8 that process.

9 MADAM CHAIR: Thank you, Mr. Smith.

10 Mr. Freidin, do you have anything?

11 MR. FREIDIN: No questions.

12 MADAM CHAIR: Please continue, Ms.

13 Swenarchuk.

14 MS. SWENARCHUK: Q. Now, Mr. Freidin
15 laboured diligently to turn your integrated forest
16 management plans into something like the Ontario land
17 use plans and I want to ask you some questions to
18 clarify that relationship.

19 Can a U.S. forest plan be changed without
20 notice to the public?

21 A. No.

22 Q. Can it be changed without public
23 involvement?

24 A. No.

25 Q. Does the U.S. Forest Service have the

1 discretion to follow or not follow a Forest Service
2 plan?

3 A. No.

4 Q. Can the U.S. Forest Service treat the
5 plan as a guideline only?

6 A. The plan may contain guidelines, but
7 the plan must be followed.

8 Q. And can a U.S. Forest Service plan be
9 developed and drawn up without an analysis of the
10 environmental impacts on of each of the alternatives
11 considered?

12 A. No.

13 Q. Now, Mr. Cosman introduced into
14 evidence a number of documents with regard to Industry
15 comments on the planning process and these are Exhibits
16 1775 and -76, -77 and -78 and you said something like
17 this at the end of this discussion. My notes say:

18 You have not asked me. I have a lot of
19 feelings about all of this. I am not rolling over.
20 There is a lot of very subtle things behind all of
21 these that you, and I think you said to the Board, as a
22 political person could understand.

23 Now, would you please clarify what you
24 were referring to in those comments?

25 A. All right. 1775 is the congressional

1 record of discussion by members of the senate. Senator
2 Hatfield is from Oregon, has a very high stake. This
3 was June 20th, 1990. Senator Hatfield was up for
4 re-election, a strong race, one that caught him a
5 little bit offguard and I had that in mind when I said
6 there are some subtle things happening here.

7 MR. MARTEL: That's not so subtle.

8 THE WITNESS: The other documents are
9 statements before the Subcommittee of the United States
10 Senate by Industry -- what I would say Industry
11 associations and, you know, these are legitimate
12 opinions and views, but they are certainly bias in
13 terms of a particular point of view.

14 I know many of these people, have dealt
15 with them through the years and they are honourable,
16 good people, I have no problem with that at all, but
17 they certainly represent one into the spectrum of
18 opinion and what they would consider balance would be
19 lack of balance in the view of many other people.

20 That's basically what I had in mind. I
21 certainly don't endorse everything that was contained
22 in these statements.

23 MS. SWENARCHUK: Those are my questions,
24 Madam Chair.

25 MADAM CHAIR: Thank you, Ms. Swenarchuk.

1 Just one clarification on the previous
2 discussion about omitting clearcut size limitations in
3 future regulations.

4 Did you say, Mr. Smith, that the
5 standards and guidelines and the good practices
6 documentation that you referred to before, those are
7 mandatory, that foresters must follow those?

8 THE WITNESS: Yes, they are.

9 MADAM CHAIR: Were you saying that is one
10 assurance against foresters approving large clearcuts
11 or larger clearcuts in the future?

12 THE WITNESS: Yes, I did say that. I
13 think there are many safeguards that would, you know,
14 result in avoiding large clearcuts, standards and
15 guidelines, best management practices, they drive
16 towards biodiversity, all of those things in
17 combination.

18 I think the public feels pretty
19 comfortable now the Forest Service is not apt to go out
20 and design large clearcuts beyond what they feel is
21 reasonable.

22 MADAM CHAIR: All right, thank you.

23 MR. MARTEL: Can I ask one question. Ms.
24 Swenarchuk, you listed a number of issues in comparison
25 of the American plan and ours, and try as I might I

1 couldn't keep up. I have got change without notice,
2 change without public involvement and I did not get the
3 next one.

4 MS. SWENARCHUK: I asked if the U.S.
5 Forest Service has the discretion to follow or not
6 follow the Forest Service plan, and whether the U.S.
7 Forest Service can treat the plan as a guideline only.

8 One more.

9 MR. MARTEL: I have it.

10 MS. SWENARCHUK: You have the last one?

11 MADAM CHAIR: Yes.

12 MS. SWENARCHUK: Madam Chair, Mr. Martel,
13 subject to Dr. Henderson's testimony on April the 30th
14 this concludes the evidence for Forests for Tomorrow.
15 We thank you for your attention through these six
16 months.

17 MADAM CHAIR: Thank you, Ms. Swenarchuk.
18 You have reason to go off and celebrate now.

19 THE WITNESS: Madam Chair, could I just
20 make a comment.

21 MADAM CHAIR: Please, Mr. Smith.

22 THE WITNESS: I wanted to compliment the
23 Board. I think that you provided a very positive,
24 constructive environment to deal with this.

25 I have never appeared before a hearing

1 with less hostility - in fact, there was no hostility
2 here. I really appreciate that. I think it encouraged
3 good exchange. You are to be complimented both of you
4 for that and also your patience was very marking.

5 I also compliment the attorneys, all of
6 them who were very easy and comfortable to deal with.
7 I thought this was a rather pleasant experience.

8 My hope is that the Forest Service
9 experience will offer something that you can use. I
10 certainly don't see it as being something that you just
11 pick up and say, this is what we are going to do. I
12 tried very hard to point out that there were many
13 weaknesses and some things that could be learned from
14 that and I hope that it is useful to you.

15 Thank you very much.

16 MADAM CHAIR: Thank you, Mr. Smith. We
17 appreciate you travelling to be with us in Toronto.
18 Thank you very much.

19 --- (Witness withdraws)

20 Are we reconvening then at four o'clock
21 for our procedural discussion?

22 MR. FREIDIN: I guess so.

23 MADAM CHAIR: Mr. Freidin has given us --
24 actually, Ms. Murphy has given us a memo that we will
25 discuss at this session.

1 MR. FREIDIN: And I have handed out
2 copies to the other parties.

3 MADAM CHAIR: The other parties have seen
4 it, good.

5 Does anybody else have anything in
6 writing that they want the Board to look at?

7 MS. SEABORN: I have nothing in writing,
8 Madam Chair, I have one or two comments in relation to
9 the draft Board order, but I will be very brief.

10 MADAM CHAIR: It should be a fairly short
11 session this afternoon.

12 MR. FREIDIN: I perhaps want to make a
13 few explanatory comments about the memo and I won't be
14 very long.

15 MADAM CHAIR: Okay, good. Thank you very
16 much.

17 ---Recess at 3:30 p.m.

18 ---On resuming at 4:00 p.m.

19 MADAM CHAIR: Please be seated.

20 Thank you for coming this afternoon and
21 the Board thanks you for looking over the draft ruling
22 and we will listen to the comments you have to make
23 about it.

24 Did you want to start, Ms. Seaborn?

25 MS. SEABORN: I have reviewed the

1 comments provided by Murphy. I don't really have any
2 further comment in relation to the undertakings that
3 the Board has identified.

4 It is my understanding that usually if an
5 undertaking is provided by a party to the Board and all
6 the other parties, the other parties, in any event,
7 would have an opportunity to ask questions in relation
8 to that answer. So I have no problem with the
9 undertakings coming in at the earliest possible date
10 regardless of whether Mr. Freidin intends to call that
11 evidence in reply at the end of the day as well.

12 In relation to the schedule, the very
13 last page of Ms. Murphy's comments, I agree with the
14 comment in relation to the time lines between September
15 15th and October 15th, whichever dates the Board
16 decides on at the end as long as we have a period of
17 time from when we have to file final argument and when
18 we actually have to take make that argument. I am not
19 concerned about those dates, but I think there does
20 need to be a gap so that we can read everyone's
21 submissions before we argue in front of you.

22 MADAM CHAIR: Yes. In Ms. Murphy's last
23 comment, in fact there is an error in the draft and the
24 date of September 15th should appear in the text of the
25 ruling, not October 15th.

1 Ms. Cosman, did you have anything to
2 comment on?

3 MR. COSMAN: Just one thing now that that
4 matter has been clarified.

5 In terms of the presentation of oral
6 argument, I realize that what the Board has done has
7 organized it to avoid there being a period of time
8 during which the proponent files, the parties file, the
9 proponent files in reply. I just want to be sure that
10 when it comes to oral argument that we will have
11 sufficient ability to address for the first time before
12 the Board the positions and the final terms and
13 conditions which will have been filed a month
14 previously by the parties.

15 So the first thing is, it should be not
16 only final argument filed by September 15th, but the
17 final terms and conditions of the parties so that when
18 we are making our presentations we are focusing on both
19 those.

20 MADAM CHAIR: Excuse me, Mr. Cosman.
21 What date did you give for filing final terms and
22 conditions?

23 MR. COSMAN: As long as it is
24 sufficiently in advance of oral argument.

25 MADAM CHAIR: Well, that's certainly the

1 hope of the Board, that the terms and conditions'
2 process would end far in advance of final argument.

3 MR. COSMAN: And that the final terms and
4 conditions of the parties would be filed sufficiently
5 in advance so to the extent that there hasn't been
6 agreement we would then have the final presentation of
7 each party because I don't want in oral submission to
8 be in a position of addressing something which until
9 that morning I thought was a final term and condition
10 and it turns out not to be so.

11 MADAM CHAIR: The Board agrees
12 completely. Our hope, and we are still awaiting the
13 schedule for when you are going to get on with the
14 negotiations, but our hope is that whatever product
15 comes out of those negotiations will be known months in
16 advance of argument.

17 MR. COSMAN: So that there may be two
18 things. There may be the agreement --

19 MADAM CHAIR: The first report to the
20 Board on what's agreed upon, yes.

21 MR. COSMAN: Then the final terms and
22 conditions of the parties.

23 The only point I am making is that in
24 addition to final argument, the final argument supports
25 final terms and conditions so they should really be

1 filed as a package.

2 So that when we get that, we will look to
3 see what Ms. Seaborn, Mr. Freidin, Ms. Swenarchuk has
4 said and in final argument we will address ourselves to
5 that combination of final terms and conditions and
6 supporting final argument.

7 MADAM CHAIR: I think that's a good
8 point, and once we know what the schedule is for this
9 negotiation process then we will be inclined to look at
10 the scheduling here and make an allowance for that.

11 MR. COSMAN: The only other point, and I
12 have spoken to a number of counsel and everyone appears
13 to agree to this; that is, that two days in oral
14 argument will be successful if the parties are able to
15 file at the same time such further written argument
16 that addresses what other parties have to say.

17 It doesn't in any way slow down what the
18 Board has to say, but if I stand up, for example,
19 having read the terms and conditions of a good number
20 of parties, what I propose to do and what other counsel
21 have indicated to me that they are considering as well,
22 I would like to be able to give you in effect a written
23 product which will be the road map for my final
24 argument, but which will respond to a number of the
25 points that have been made which I will not have had

1 the opportunity up until then to respond to.

2 I will not want to take your time to deal
3 with everything orally, plus I won't have the time to
4 deal with everything orally. So I want to ensure I
5 have the opportunity and each party wants to ensure
6 that they have the opportunity to speak to the various
7 issues that other parties have raised in written
8 argument and in their final terms and conditions, and
9 much of that can be done, if a party wishes, by
10 providing you at the time of oral argument, if a party
11 wishes, with a written product as well as making an
12 oral presentation.

13 That's very common at large hearings and
14 perhaps needn't even be asked for, but I just wanted to
15 raise it with you so that you would understand that
16 this is what we would propose to do, so that we won't
17 be dealing with every little nitty point in what other
18 parties' have to say in our oral argument and at the
19 same time we are not asking for any delay.

20 MADAM CHAIR: Let's get this straight,
21 Mr. Cosman.

22 What you are saying is -- obviously the
23 Board didn't accept the parties' view that we have an
24 exchange of parties' reply to argument.

25 MR. COSMAN: That's right.

1 MADAM CHAIR: We didn't think that was
2 going to help us a lot.

3 So what you are suggesting is not doing
4 that any way, what you are suggesting is somehow doing
5 something supplementary to your written argument?

6 MR. COSMAN: What I am suggesting is at
7 the time of oral argument, at the discretion of the
8 party --

9 MADAM CHAIR: On September 15th everyone
10 was to file their written argument with us.

11 MR. COSMAN: All right. So at that
12 point in time I will see, for example, for the first
13 time the written argument of Ms. Swenarchuk and she
14 will see mine.

15 We will have, let's say, a month or
16 whatever period of time to look and consider each
17 other's final terms and conditions and written argument
18 as would all the other parties. Then we have two days
19 only to deal with it. There is going to be a lot that
20 has to be said in those two days frankly.

21 I mean, legal argument that has been
22 raised by some of the parties could go for a period of
23 time on some of the native right's issues. You may be
24 facing a lot of time.

25 One of the things that I would like to do

1 to avoid that is to file at the time of my oral
2 argument written response and I will do it on points
3 where (a) I don't want to take the Board's time in oral
4 argument but I feel something has to be responded to;
5 and (b) to ensure that you have the full context, for
6 example, of legal argument with legal authorities to
7 the extent that a legal argument has been raised. So
8 you will have that in writing for your consideration
9 when the time comes for to you deliberate.

10 So whereas the Board rejected the
11 parties' suggestion that there may be a period of time
12 for exchanging and then a period of time for the MNR to
13 reply, which will really expand the period of time,
14 what I am saying is that there will no change at all in
15 the schedule. The schedule will remain exactly as you
16 have put it forward here except that a party will have
17 at his or her option the opportunity to supplement
18 their oral submission if they wish with written
19 submission.

20 As I say, this is extremely common at
21 hearings and at large hearings and it is helpful to the
22 tribunal in those cases. It avoids wasting time and it
23 is something perhaps that I need not even ask for, but
24 I just wanted to raise it so that you will have the
25 knowledge that that will be our intention.

1 MADAM CHAIR: Now, would one use of this
2 supplementary material you are talking about, if you
3 gave us -- how much material are you talking about?

4 MR. COSMAN: It would depend entirely on
5 what other parties had to say.

6 If we agree, it could be three pages, it
7 could be 20 pages, it depends. If there is a legal
8 argument on whether or not half the province should be
9 handed over to the native people, as someone has
10 submitted, that's going to require legal argument.

11 MADAM CHAIR: The Board has no problem
12 with the idea that you would give us -- I don't know.
13 As we listened to your oral argument, you would say:
14 All right, now can you look at my material and there is
15 a book of authorities and whatever and it is on these
16 pages.

17 Is that the kind of thing you are talking
18 about, that it would be like exhibit material that the
19 Board would have to refer to as you went through your
20 oral argument?

21 MR. COSMAN: Yes, that's right.

22 MADAM CHAIR: It wouldn't be new
23 evidence?

24 MR. COSMAN: No, it would not be
25 evidence. That's important. It is not evidence at

1 all. It is part of the summary or submission. There
2 is nothing new, nothing beyond which is already in
3 evidence. It is really the supporting argument for the
4 position that each party has to make before you.

5 MADAM CHAIR: Do you believe this would
6 speed up the oral argument--

7 MR. COSMAN: I think it would definitely
8 speed up it.

9 MADAM CHAIR: --to make it go faster and
10 more smoothly?

11 MR. COSMAN: Absolutely. I think you
12 will see that all counsel would agree on that.

13 MR. MARTEL: What date? I mean, you
14 don't want it received the same day --

15 MR. COSMAN: The same day.

16 MR. MARTEL: No, wait a minute.

17 MR. COSMAN: In other words, when I stand
18 up to argue or as Ms. Swenarchuk stands up to argue we
19 will file at that time sort of the road map and written
20 submission which is supplementary to and will assist
21 you in following our argument and will have the support
22 for the things that we say that we obviously won't have
23 time in oral presentation to make before you.

24 MADAM CHAIR: But that material would be
25 limited to what you feel is necessary after you had

1 filed your written oral argument?

2 MR. COSMAN: Yes, that is right. It is
3 only responsive to what the other parties have said.

4 MADAM CHAIR: Do any of the other parties
5 have an objection to this?

6 MS. SWENARCHUK: I don't have an
7 objection. I agree with Mr. Cosman.

8 My proposal would have been that such
9 additional material be filed perhaps two weeks after
10 the oral I guess was received from everyone, but it is
11 also acceptable to me to file it as we begin oral
12 argument.

13 MR. MARTEL: That's what I raised it for
14 because if it is voluminous at all --

15 MS. SWENARCHUK: You may want to read it.

16 MR. MARTEL: That's my concern. If it is
17 30 pages and you hand it to us and we are supposed to
18 follow what you are saying orally and, at the same
19 time, trying to comprehend what you have got written
20 before us without having seen it until the midnight
21 hour, I don't think that's very helpful either.

22 MS. SWENARCHUK: That's why I would have
23 proposed that you receive it a couple of weeks in
24 advance of oral argument -- or a couple of weeks after
25 everybody filed their written argument.

1 MR. COSMAN: That was the initial
2 proposal, you will recall, Madam Chair.

3 That goes back to what -- in fact, I made
4 that very submission the last time I was here; that is
5 that once the parties have got each other's materials
6 they have the opportunity to file a written reply.

7 What I am proposing now, and I am
8 amenable, as Ms. Swenarchuk, to either alternative, but
9 there has to be a period of time within which to
10 prepare that written document. That's the problem.

11 So if it is 30 days from the time I get
12 it to the time of oral argument -- I mean, I was
13 thinking in 30 days I could prepare a written product
14 and file it. I didn't want to make a suggestion that
15 would cause a delay of that.

16 MR. MARTEL: You can write a book in 30
17 days.

18 MADAM CHAIR: Mr. Martel I think has
19 raised the issue that concerns the Board and that is,
20 we are going to be very focused on what you are telling
21 us, we are going to be listening to you.

22 I don't think you want us distracted
23 trying to go through large amounts of paper that we
24 haven't seen, but at the same time it is helpful for
25 the Board to have on the record as you give one of your

1 points orally where that is in your written argument or
2 in a supplementary pile of paper.

3 That's helpful, but we don't intend to
4 divert our attention to flipping pages and digesting
5 this material as we go along.

6 MR. FREIDIN: Can I make a comment, Madam
7 Chair?

8 MADAM CHAIR: Yes, sir, Mr. Freidin.

9 MR. FREIDIN: We are having sort of an
10 open discussion here.

11 There are two reasons -- I mean with Mr.
12 Cosman I agree wholeheartedly. I mean, he feels that
13 the best way to submit, make part of his argument,
14 particularly that part which is in response to things
15 which has arisen in other people's argument, that he
16 should be allowed to do it in writing.

17 Now, not only -- I mean, with the
18 limitation on the amount of time for oral presentation,
19 it might be absolutely impossible - and I suggest to
20 you that it will be absolutely impossible - for some
21 parties to adequately respond to positions which have
22 been raised by another party or a number of parties.

23 The only way to do that --

24 MADAM CHAIR: Excuse me, Mr. Freidin.

25 That's exactly the premise that the Board

1 doesn't accept. The Board doesn't accept after a
2 four-year hearing, as this will ultimately be, that
3 there will be any surprise with respect to the issues
4 that are raised in argument, that there will be any new
5 information that a party will come up after they have
6 gone through what he have all endured in this very long
7 hearing and gone through negotiations for terms and
8 conditions.

9 We simply don't accept that when we get
10 down to argument a party is going to come up with
11 issues that have not made themselves quite apparent
12 through the course of this very long hearing.

13 MR. FREIDIN: It may not be -- let me
14 give you an example.

15 In the Ministry's submission on the issue
16 of monitoring, we will say what we propose in relation
17 to monitoring, we will refer to those monitoring
18 programs and all those sorts of things. It is usually
19 regarded that we wouldn't go ahead and be able to guess
20 at every position of every party and say: Well, they
21 will probably say this and our response is this, they
22 will probably say that and we will respond to that.
23 That will be confusing. What we would do is we would
24 say: Here is our position on monitoring, we deal with
25 it in other issues in a general way.

1 If the Ministry of the Environment and
2 Forests for Tomorrow tomorrow come up and say: Well,
3 we think that's all fine, but we want you to do some
4 other things, and we want to respond to that. We may
5 say: Well, look, we don't want to take the time of the
6 Board to do that orally, but we would like to be able
7 to say: We don't think that specific little provision,
8 which we didn't deal with in our argument, makes any
9 sense for the following reasons and we set it out in
10 half a page or page.

11 We have to have, in my respectful
12 submission, the opportunity to put that kind of
13 argument before you in that fashion so we don't have to
14 take your time to deal with it orally and we can deal
15 with the more important issues, if I can use that term,
16 orally.

17 MADAM CHAIR: Certainly, that's the Board
18 intends to have done. I think that's a bad example
19 because I think that's something that should come out
20 in the terms and conditions' exercise.

21 The Board doesn't want -- I don't know
22 how the Board would react if we went through four years
23 of this and we heard argument on matters that we just
24 had never heard before.

25 MR. FREIDIN: You will have heard it, but

1 we can have a negotiation process and we get zero
2 agreement on monitoring. You are going to have to hear
3 what the arguments are and the proposals are on
4 monitoring, why each party thinks their proposal is the
5 one that should be accepted, but you have to, with
6 respect, as a matter of procedure allow the parties an
7 opportunity either orally or in writing, if you want it
8 in writing it will save time of the hearing --

9 MADAM CHAIR: Well, we have asked for it
10 in writing.

11 MR. FREIDIN: But I can't -- I have no
12 objection to your suggestion that we file everything
13 together, but having filed it all together, where do I,
14 where does my client have the opportunity to respond in
15 argument to a suggestion made in the argument of
16 another party?

17 The only opportunity that my client has,
18 and the same for everybody else, is in either oral
19 argument or in written argument.

20 I submit to you that everybody has -- you
21 know, you have set out a limitation on oral argument.
22 If there was no limitation I would say: We won't file
23 anything, we will deal with it all orally, whether it
24 takes six weeks or six years, but that's not the order
25 of the Board. The order of the Board is two days oral

1 argument.

2 I am saying, what happens if there is an
3 issue that has to be responded to for there to be
4 natural justice and I better be able to respond to
5 something. If I can't do it in two days I don't think
6 I should be put in the position, nor should any of the
7 other parties, to be told: Well, sorry, Mr. Freidin,
8 if you can't do it in two days, you can't do it in
9 writing, we don't want to hear about it because then
10 you are prejudging the case and you are saying: We
11 don't have to hear any evidence on that -- don't want
12 to hear any argument on that, and I think that is not a
13 usual and I think that would be a very dangerous way to
14 proceed.

15 MR. MARTEL: Well, we would have heard
16 the evidence.

17 MR. FREIDIN: You will have heard the
18 evidence but you will not have heard our interpretation
19 of what the evidence means. That's what argument is
20 for.

21 MR. MARTEL: No, I understand that. You
22 included both evidence and argument.

23 MR. FREIDIN: No, I didn't mean evidence.

24 MR. MARTEL: You withdrew...

25 MADAM CHAIR: Ms. Seaborn?

1 MS. SEABORN: If I could just make one
2 comment, Madam Chair.

3 I think we are taking Mr. Cosman's simple
4 proposition and blowing it out of proportion. I think
5 what the parties were saying to the Board is that when
6 we get up to make our oral argument don't be surprised
7 if some of us would like the opportunity to say: Madam
8 Chair, Mr. Martel, this is a road map to my argument,
9 and provide you with it. Whether it is 10 pages or 20
10 pages, I don't know how long it will be. Of course,
11 the parties will keep in mind the Board's comments and,
12 Mr. Martel, your comment that you don't want to be
13 faced with a stack of paper this high on the day of
14 oral argument.

15 So I think that's all that we are
16 suggesting to the Board, is that some of us -- and,
17 again, I don't think it should be a requirement, but we
18 want to have the opportunity if we decide to do so at
19 the end of the day to provide you with some further
20 written material.

21 The other thing I would say, Mr. Freidin,
22 there is a requirement or proposal in the draft order
23 for the parties to get together and decide on the
24 issues list, and I think the agreement on the issues
25 list and the issues to be addressed within argument

1 would cover some of the problems that you have
2 identified with respect to not knowing what issues you
3 have to respond to because we are all going to be
4 dealing with the same issue on our first go around.

5 MR. FREIDIN: There is no questions about
6 that. We are dealing in this hearing with process. It
7 is not good process not being able to file that
8 additional material because it is not taking one second
9 of the Board's time, Madam Chair. I don't want to be
10 unfair about this.

11 It could be more than a road map. I may
12 give you a road map to my oral argument and it is going
13 to be a road map that is going to give me two days of
14 rooting and I may say: I can't deal with all the
15 issues in two days and all the issues that have to be
16 dealt with in response, I am going to give you a
17 written document.

18 When I stand up in oral argument I am
19 going to say: You have got my written argument, but I
20 have to respond to the other things and here is another
21 bunch of paper in response to all those things. I will
22 be referring to part of that in oral argument, but
23 there are parts in there that you ought to read and I
24 think they are self-explanatory, but I have to have, in
25 my respectful submission, in any hearing like this you

1 have to have the opportunity to do that.

2 I don't want to mislead you and tell you
3 that all I intend to file in writing when I get up in
4 oral argument by way of response only a road map. It
5 is going to be more. I respectfully submit that that
6 is something that every party is entitled to in law.

7 MADAM CHAIR: And then, Mr. Freidin, what
8 do you intend to do in oral argument in reply?

9 MR. FREIDIN: It might very well be that
10 the written document that I give will be used partly
11 for my oral reply. It may be partly my argument, which
12 would limit the amount that I have to deal with in oral
13 reply.

14 You know, you can't everything in
15 writing. Parties have to get up and put different
16 words and different emphasis through their oral
17 argument on something which is in writing and I will
18 have to get up and deal with that in my oral reply. I
19 mean, I can't predict everything. You have set some
20 pretty tight timeframes here and everyone is saying we
21 can live with them. I am just saying it is a matter of
22 process of what Mr. Cosman perhaps need not have raised
23 but he has raised.

24 MR. COSMAN: I am almost sorry I did
25 that.

1 MADAM CHAIR: You could have gone first,
2 Mr. Cosman, and submitted something to the Board and
3 had it over with.

4 MR. COSMAN: Perhaps just to finish it.

5 What I have proposed, I suggest, you will
6 find very helpful and I am sure that all of us are
7 going to try to limit the amount of time we are going
8 to take in oral argument. That's one of the exercises.

9 Secondly, we are going to try to limit
10 the issues through agreement, through negotiation.

11 At the end of the day it is obvious to
12 you I am sure, as it is to all of us, that there are
13 going to be a number of large and smaller issues that
14 this Board will have to decide.

15 How then do the parties get their
16 response to other parties have to say before the Board.
17 Not just -- if I had, for example, Ms. Swenarchuk's
18 written submission, then I would be able to respond to
19 it in writing. I will not have it when I prepare my
20 written argument. So what I am saying is and I think
21 what we are all saying is, it is going to be helpful to
22 you, it will shorten the process.

23 I can tell you from experience that in a
24 number of large cases and large hearings it is common
25 practice for the tribunal to receive and be thankful

1 for having the parties' written argument in response to
2 what other people have to say because at the end of day
3 you will have to say: Well, Cosman suggested this,
4 what did Forests for Tomorrow respond to it and Ms.
5 Svenarchuk will have something in writing or
6 combination of something in writing and oral, and I
7 think you will find it will be very helpful.

8 So what I was going to suggest to you is
9 this will be a common practice in any event, but since
10 we have moved away from the process of exchanging it in
11 advance, I just wanted you to know that it will be our
12 proposal to do that to help you.

13 I mean, we are not going to read it, we
14 are not going to -- we will say that there are three
15 reasons. Our oral argument will be the highlighting
16 after four years of evidence or five years of evidence,
17 it will be the highlighting of the keys things that we
18 are arguing in response to what other people have said
19 as to why you should accept what I am suggesting over
20 what they are accepting. It will be limited, but at
21 the end of the day it is the kind of thing that a
22 tribunal, I can tell you from having sat on tribunals,
23 you will welcome because at the end of the day it will
24 be the parties focusing this mass of documentary and
25 oral testimony of five years into a number of very

1 discreet arguments for you and you will find it helpful
2 I'm sure.

3 I am certainly sure that you will -- the
4 parties will try to help you through a combination of
5 written and oral submissions.

6 MADAM CHAIR: Well, the Board will
7 certainly consider all your comments.

8 Did you have anything else you wanted to
9 say, Mr. Cosman?

10 MR. COSMAN: No.

11 MADAM CHAIR: Good.

12 Mr. Freidin, go ahead -- or Ms.
13 Swenarchuk, sorry.

14 MS. SWENARCHUK: I don't have anything to
15 add to the discussion.

16 MADAM CHAIR: Mr. Freidin?

17 MR. FREIDIN: Madam Chair, very briefly
18 then, if I can highlight certain portions of the memo.

19 You will note the comment about the
20 purpose of reply evidence and the concern we had with
21 the comment in the Board's draft order that the purpose
22 of reply evidence is limited to giving the porponent
23 the opportunity to rebutt the evidence given by the
24 parties opposite.

25 I think we made the submission during the

1 last round, which I won't repeat, that this is not a
2 normal civil case as we discussed here in the written
3 material, that just as the Board has asked specifically
4 that you wanted to be updated on certain evidence, all
5 I am saying is that there may be other evidence as well
6 that the proponent feels that it would be important for
7 the Board to be updated on.

8 I can't think of no better example than
9 the monitoring exercise. If there is some important
10 breakthrough, development in terms of the monitoring
11 exercise, I would think that the Board would want to be
12 updated on this. All I am saying is, I would want the
13 opportunity to do that so that we wouldn't be limited
14 to the sort of strict rule of reply evidence that you
15 get in a civil proceeding where, as you have said, you
16 know in advance what the position of every party is..
17 That is the one submission.

18 One submission that I do think that
19 perhaps we should just hear from, and nobody seems to
20 have any concern, and maybe again I shouldn't raise it,
21 but on page 2 we have said in the second line:

22 "What safeguards do the parties propose
23 to protect their interests."

24 Now, this is in terms of us putting in --
25 really in answering specific undertakings from the

1 Board, the Board is interested in this because the
2 Board wants that information for the purposes of
3 considering it and coming to their decision.

4 Because of that, it becomes evidence and
5 I am not sure whether the Board is proposing that this
6 be by way of witness statement, with interrogatories,
7 whether it be supplemented orally in September in the
8 middle of your schedule, which I didn't think you would
9 probably want it, or whether it would be something
10 which would be left to the Ministry to decide, whether
11 they felt in order to fully answer the concerns you
12 want addressed they would have to do it both written
13 and orally.

14 MADAM CHAIR: Let me tell you what the
15 Board has in mind.

16 MR. FREIDIN: Okay.

17 MADAM CHAIR: Again, it goes back to this
18 idea of reply evidence. Obviously we have been
19 sitting a long time, we have been hearing a lot of
20 evidence and it won't serve anyone's interest to wait
21 until the very end of the case for the Board to get
22 everything it feels it needs to make a decision.
23 That's our first position. There are some pieces of
24 information that we feel we want to see ahead of time.

25 The way that we would -- this is not

1 information that would in any way be an opinion of the
2 Ministry of Natural Resources. We would see this
3 information hopefully coming to us by way of agreed
4 statement of fact.

5 For example, we have asked -- well, there
6 are two different cases. Let's look at the idea of the
7 Board sitting down to write its decision, it's looking
8 at various tables and graphs it intends to use in its
9 decision and the most recent date on it is 1988 or
10 1989. Well, obviously the Board is not happy with
11 referring to data that when it is publicly available
12 may be updated to 1991.

13 The Board wants to be able to say: We
14 want these sorts of statistics updated to as close --
15 as recently as we can by the time we issue our
16 decision. We can't see why the parties would have any
17 objection to that because we can't see that that would
18 be different evidence. That's simply publicly
19 available information that the Board would say:
20 Please, MNR, provide it to us because you can do it
21 faster than we can.

22 MR. FREIDIN: That may not be a problem
23 and maybe no one will have any objections. That
24 addresses one of the -- you will notice Item No. 3 on
25 page 2.

1 MADAM CHAIR: "Current as of year end
2 1992."

3
4 MR. FREIDIN: No, no.

5 MADAM CHAIR: Go ahead.

6 MR. FREIDIN: That's might be a typo, I
7 don't know.

8 What I am more concerned about is, MNR
9 could provide updates of data provided by MNR, but it
10 may not have access to data provided by others. Does
11 this request the same of parties other than MNR.

12 Also, as you know, we have put in
13 numerous charts, statistics, graphs, then went in by
14 way of exhibit, they are in witness statements and
15 they refer to stuff that happened in 1973. I mean, we
16 don't know which ones you want.

17 MADAM CHAIR: Believe me, Mr. Freidin, we
18 would tell you very specifically what we would want.

19 MR. FREIDIN: I guess what I am saying --

20 MADAM CHAIR: It is not all the
21 statistical information that MNR and the parties have
22 submitted during the course of the hearing.

23 MR. FREIDIN: All right. Does the Board
24 then intend to provide us with the specific charts and
25 tables they would like updated? If that's the case, I

1 don't see that there will be a problem.

2 MADAM CHAIR: Yes, we would.

3 MR. FREIDIN: All right.

4 MADAM CHAIR: I can't see where the
5 parties would object or want to cross-examine on new
6 estimates data or new production figures or new...

7 MR. FREIDIN: That's fine. My concern
8 was it wasn't clear whether you intended MNR to update
9 this or whether -- but if you are going to provide
10 which charts you want, then I don't think there is a
11 problem with that. If there is a problem I will let
12 you know.

13 MS. SWENARCHUK: I won't take a lot of
14 time addressing this now because you have specified
15 with regard to paragraph 2 the question of harvest
16 costs, that the parties meet to try to come up with a
17 way of presenting it.

18 I would say with respect to this kind of
19 data, it is the kind of data that I expect my client
20 would want to have an opportunity to cross-examine on.

21 MADAM CHAIR: Which is a different case.
22 This is the second kind -- statistical stuff I think is
23 fairly straightforward and we would be surprise if
24 there was any objection.

25 The second kind of request is a very

1 different one.

2 MR. FREIDIN: Before we get to the second
3 kind of request, if I can get clarification in relation
4 to Item 3 on page 2, clarification of the second matter
5 I have raised in terms of the -- you would want this
6 done by -- is this something you wanted done by
7 September 1st, 1991, the update?

8 MADAM CHAIR: Well, we would certainly
9 want to be in a position of knowing which statistical
10 information we could have updated and to what period.

11 MR. FREIDIN: Do you have any idea when
12 you will be providing us with the tables and graphs
13 that you would like us to update for you?

14 MADAM CHAIR: We would do it as early as
15 possible. Well before September the 1st.

16 MR. FREIDIN: Okay, I guess that deals
17 with item 3.

18 I'm sorry, you were making some comment
19 about the other type of request.

20 MADAM CHAIR: Well, as Ms. Swenarchuk has
21 point out, there is obvioulsy an issue before the
22 Board -- well, the Board thinks it is an obvious issue;
23 that is, we have before us proposals for two apparently
24 different silvicultural systems. One being the one
25 that Ms. Swenarchuk has brought evidence on and that is

1 a modified system with more reliance on natural
2 regeneration and we have an alternative method being
3 the one that's in use now by the MNR which involves
4 more clearcutting and more artificial regeneration, and
5 the Board has waited throughout Ms. Swenarchuk's case
6 to see if we would be receiving any evidence on what
7 the costs would be of modified, harvesting and natural
8 regeneration and we didn't get that kind of
9 information.

10 The Board thinks it is in a fairly
11 difficult situation without having some sense of what
12 the differences are between those two proposals.

13 MR. FREIDIN: In the material that I
14 provided you with, Madam Chair, I referred to previous
15 evidence that was led by MNR and OFIA.

16 You will recall I think most of the
17 cross-examination was on the differences between those
18 costs with Mr. Marek where we went through a lot of
19 material from the black spruce study, the type of road
20 costs, planning costs, loss of blowdown, percentages,
21 you know, what percentage of the volume we might lose
22 and that sort of thing.

23 Are you looking for something different
24 than that because it might be possible that if we got
25 together and somehow pulled together all of that

1 material in some sort of -- in one place for you that
2 that would be what you are looking for?

3 MADAM CHAIR: Well, we certainly
4 appreciate Ms. Murphy's suggestion and we think that's
5 a good way to start, that the evidence that we have in
6 front upon of us on the costs of silvicultural -- these
7 approaches be pulled together in some way, but our
8 recollection of the evidence of Mr. Marek and others
9 has been that it has referred to studies that have been
10 done prior to 1988.

11 We didn't have a sense going through it
12 what sort of reliability we could attach to any of
13 those estimates that came out and we would like to see
14 in front of us some analysis of the cost of these two
15 different approaches.

16 MR. FREIDIN: So you basically agree with
17 the approach that Ms. Murphy has suggested?

18 MADAM CHAIR: We do agree with her
19 approach as a first step, that the parties get together
20 and work on getting before the Board, as a starting
21 point, compiling the evidence as we have it, but we
22 feel the parties are going to have to go beyond that
23 and work together as they did in the clearcut exercise
24 to give us some better sense of this.

25 MR. FREIDIN: All right. It sounds like

1 it might be quite a task. I am not saying we will or
2 we won't have problems with the September 1st deadline,
3 but we have to get together on this and get back to the
4 Board on what we want to do and make sure it is
5 responsive to what the Board's concern is.

6 We may be able to pull together what is
7 there now and there is no use on us going off on some
8 difficult, time consuming exercise just to find out at
9 the end that it is still not what you want. We may
10 have to come back to you.

11 MADAM CHAIR: The Board would be very
12 happy to sit down and talk with the parties and get
13 through this, but we consider this to be a fairly
14 important piece of information that we have been
15 waiting to receive and we haven't so far. We think it
16 is the sort of project that all the parties should be
17 involved in.

18 MR. FREIDIN: Can you give me some sense
19 of what you would sort of -- what you are anticipating
20 seeing without giving any figures?

21 MADAM CHAIR: Well, the evidence before
22 the Board is this, Mr. Freidin: The evidence is that
23 with the clearcut, artificial regeneration method, the
24 artificial regeneration component is more expensive.

25 When we look at modified cutting versus

1 natural regeneration, the expensive component in that
2 approach is modified harvesting. We have that evidence
3 before us.

4 MR. FREIDIN: You have some numbers
5 attached to.

6 MADAM CHAIR: Yes. But the Board doesn't
7 feel it has any evidence that says this approach of
8 clearcut and artificial regeneration would be in the
9 order of this amount versus modified and natural
10 regeneration being this kind of a cost.

11 In other words, if the Board is going to
12 be asked to make a decision between those two systems,
13 and certainly Forests for Tomorrow's terms and
14 conditions argue strongly that they want the Board to
15 consider doing something other than clearcut and
16 artificial regeneration, the Board feels that they have
17 to have a better idea of what the costs are between
18 those two.

19 MR. FREIDIN: I think I understand. Are
20 you talking then of a somehow comparative cost
21 implication for the province, like for the area of the
22 undertaking, as opposed to how it might impact on any
23 one given block, operational block?

24 MADAM CHAIR: Went don't have any sense
25 of how the costs can be assessed. It could be -- I

1 don't know. That's something the parties--

2 MR. FREIDIN: That may be the answer.

3 MADAM CHAIR: --hopefully would propose
4 to us. Certainly we just think it is an important
5 thing to do.

6 I mean, if you were to make a decision
7 and -- hypothetically if you were to make a decision on
8 some silvicultural approach and you knew nothing about
9 what the cost implications were, I don't think any
10 Board would feel comfortable with making that kind of
11 decision.

12 We are not talking about getting
13 confidential company information. We don't need to
14 know how much it cost to construct a kilometre of road
15 or how much -- we don't need that kind of cost
16 information, but we have to have a sense of whether the
17 way we do timber operations now would be much cheaper
18 or much more expensive than looking at an alternative
19 way of doing it.

20 MR. FREIDIN: For instance, let me just
21 give you a hypothetical. I am not saying this is the
22 way it might go, but if you sort of said you have
23 200,000 hectares of timber ever years, let's assume
24 that it is all done in open clearcuts - I mean, I am
25 not saying we can do that - and if we cost that out

1 with roads and everything and we say: Now, let's
2 assume it is all done with strip cuts of this dimension
3 or block cuts of that dimension, then it would cost
4 this much because here are all the implications.

5 We might get down to the end of course
6 and say it can't be any of those because there is a
7 difference, obviously, of opinion whether you can use
8 certain modified harvest methods in all situations, and
9 somebody may come up and say: Well, if you use it 10
10 per cent versus 90 per cent these are the cost
11 implications.

12 You are looking for something broad and
13 general like that? That is the impression that I get.

14 MR. MARTEL: What worries me is what I
15 haven't been to get out of the whole process is -- for
16 example, we looked at the first system, the proposal
17 presented by MNR includes a whole series of things:
18 harvest, access, you go back and you do site
19 preparation, you then plant and then you maybe have to
20 knock back some of the competition.

21 I don't know what all that comes to and
22 what all that means when I look at it in -- what it
23 costs as opposed to what Ms. Swenarchuk is suggesting.

24 We as a Board might say: Well, look,
25 maybe this process would be better if we had smaller

1 clearcuts and we put more money into roads and keeping
2 them there as access roads because Industry's claim is
3 that one of its big costs is going back and looking
4 after roads for 15 years to do three coupes.

5 We have no sense. I don't anyway. I
6 don't want to put words in my colleague's mouth. I
7 don't have a sense anywhere that we have seen anything
8 yet what kind of indicates what are total costs of an
9 acre, and then you can extrapolate it to the whole
10 province, but it is very difficult for me to decide:
11 Well, I am going to favour clearcuts or I am going to
12 favour -- I accept the Industry's position if I don't
13 know what the various costs are and how they relate to
14 what we are attempting to do in terms of the type of
15 regeneration and the whole -- and it just isn't there.

16 I mean, there are smatterings of it. I
17 think my colleague mentioned the study '88 and the
18 comparison of what someone did a long time ago, what
19 road costs were. That's really not laid out, I don't
20 think, and we have been asking a series of questions
21 for the past six or seven months trying to get to that
22 and it didn't come.

23 MADAM CHAIR: What Mr. Martel is getting
24 at, Mr. Freidin, is not the actual specific cost
25 because it is not clear that you can get those or

1 generalize them, but a cost comparison between what
2 appeared to be two alternatives ways of doing timber
3 management.

4 MR. FREIDIN: All right. The discussion
5 is helpful, and just for clarification, are the costs
6 that you are talking about the dollar costs of the
7 silvicultural operations themselves and associated road
8 building costs?

9 MADAM CHAIR: Yes.

10 MR. FREIDIN: That's what you are
11 talking?

12 MADAM CHAIR: Yes.

13 MR. FREIDIN: With that direction I think
14 we can follow along Ms. Murphy's suggestion and come up
15 with something.

16 MS. SEABORN: Just to be clear, too, Mr.
17 Martel, are you talking about what I have termed
18 silvicultural packages? You are talking about harvest,
19 renewal and --

20 MADAM CHAIR: We are talking about the
21 four activities

22 MS. SEABORN: All the four activities
23 together rather than the individual components and you
24 want orders of magnitude comparing the different
25 alternatives?

1 MR. MARTEL: Yes. I don't know how we
2 can make a fair decision to anyone if we don't have
3 some comparisons to look at that are -- not the actual
4 costs of any company, but pretty realistic figures that
5 say: Well, you know...

6 We could make a decision that would
7 destroy the whole Industry and what would that do to
8 us? We don't want to be in that kind of bind. We want
9 to know what we are -- I mean, this is pretty big stuff
10 for northern Ontario.

11 MR. FREIDIN: If other people are
12 content, I am content with the direction.

13 MADAM CHAIR: All right. You might speak
14 to Ms. Swenarchuk. I noticed she left and someone
15 might bring her up-to-date on that discussion.

16 MR. COSMAN: The only thing we don't have
17 to worry about is balloons.

18 MS. SEABORN: We can go on a balloon site
19 visit.

20 MADAM CHAIR: No, thank you.

21 MR. FREIDIN: Madam Chair, before I go
22 off page 2, item No. 3, what I understand you will do
23 is you will be telling us which tables you want us to
24 do and obviously if we are going to update in September
25 of '91 we will update them as close to '91 as we can.

1 We might very well get a request later on to update
2 them again.

3 MADAM CHAIR: Yes, that's right, Mr.
4 Freidin.

5 The purpose of that is simply to make
6 sure in the Board's decision that the most up-to-date
7 publicly available statistical information is there.

8 MR. FREIDIN: If we could go to page 3.
9 In the written material, your draft order at page 4,
10 you do say June the 1st you will provide a list of
11 issues which to have addressed in written argument.

12 I take it that somewhere along the line
13 you were going to indicate what you would like to hear
14 highlighted in oral argument as well.

15 If this was supposed to be -- so that's a
16 matter which I would like addressed. If this is the
17 date for oral argument, for the reasons set out in the
18 first three paragraphs on page 3, I think it would be
19 beneficial for the parties to have an indication of the
20 things that you would like dealt with in written
21 argument before we appear before you on May the 1st to
22 deal with the written format

23 So what I am suggesting is, if you could
24 change the -- I would suggest maybe saying, April the
25 1st tell us about written argument, May the 1st we come

1 here and talk about format and June the 1st you
2 highlight what you want orally or some other dates that
3 you think is convenient.

4 MADAM CHAIR: All right, Mr. Freidin.
5 Yes, the Board doesn't disagree with that.

6 MR. FREIDIN: All right.

7 MADAM CHAIR: Mr. Freidin, can you tell
8 the Board what the advantage is in directing oral
9 argument as well if it decides to provide some
10 direction to the written argument of the parties?

11 MR. FREIDIN: Well, again, it may be
12 redundant; I don't know. It may very well be that
13 having regard to the limitation for oral argument you
14 may recognize that you can't possibly hear us on all
15 the things you would like written argument on because
16 you are going to want -- you make your decision on more
17 than just what you hear from us orally.

18 I am just assuming you may say written
19 argument on a whole bunch of things and give us some
20 indication, if you have anything to add, if you are
21 limited on time, these are the ones we would really
22 like to get for sure.

23 MADAM CHAIR: All right. The Board
24 hadn't considered doing that, but we will consider it
25 now.

1 MR. FREIDIN: All right.

2 MR. COSMAN: I'm sorry, Madam Chair, was
3 your last question: If we are going to have written
4 argument in reply why would we even have oral argument
5 at all?

6 MADAM CHAIR: No. My comment had to do
7 with the fact that we have agreed that some time next
8 spring we would issue to the parties a list of items
9 that we would like to see or give it to the parties for
10 direction with respect to written argument.

11 Mr. Freidin has suggested that we do that
12 in advance of the agreement among the parties as to how
13 written argument will be designed and we have said yes,
14 and then Mr. Freidin came up with what I think is a new
15 idea, but maybe he suggested it to us before, and that
16 is providing some direction after that on what we would
17 like to hear specifically in oral argument.

18 MR. COSMAN: Okay.

19 MR. FREIDIN: You may choose a date. I
20 mean, the sooner the better. You may not be able to do
21 that on June the 1st. I am just saying, you may get
22 the written argument, all of it, and you may say: Now
23 that we see the written argument there are some issues
24 here that we don't quite understand, we would like
25 Freidin to talk a little bit more, explain this part

1 and Cosman to explain that part.

2 We would like that direction in advance
3 of actually getting up and presenting our argument. So
4 it gives us some advance notice that you would like to
5 hear us orally in relation to certain parts of what you
6 got in writing. It might be that you can't tell us
7 what you want orally before you got the written
8 argument. If you can, fine; if not, fine. I am just
9 saying that's has been a normal procedure.

10 MADAM CHAIR: Thank you, Mr. Freidin.

11 MR. FREIDIN: The last item, if I might.
12 You have a date of April the 17th--

13 MADAM CHAIR: Yes.

14 MR. FREIDIN: --set out in the attachment
15 where MNR and the parties will meet to discuss MNR's
16 written reply evidence.

17 I assume, Madam Chair, that this is for
18 the purpose as suggested in my early submissions to
19 you; that is, to see if the parties can in fact come to
20 some agreement about facts, that we put agreed
21 information before you and to find out as between the
22 parties whether we have got a problem in terms of what
23 is being dealt with and how it is dealt with, just so
24 that it may require motions or something like that.

25 MADAM CHAIR: Absolutely. Ideally the

1 Board would like you and the other parties to come to
2 some agreement on reply evidence and hopefully it will
3 be of such a size that it will fit into our schedule
4 and there won't be objections to its contents, so the
5 Board can sit down and listen to reply evidence instead
6 of hearing arguments about it.

7 MR. FREIDIN: I hope the parties agree
8 with everything we put down in reply evidence and we
9 won't have to put anything in writing.

10 Those are my comments, Madam Chair.

11 MADAM CHAIR: Thank you, Mr. Freidin.

12 Any other comments?

13 (no response)

14 Thank you very much.

15 We sit again next Thursday for the...

16 MR. PASCOE: Western Ontario Associated
17 Chambers of Commerce. Nine o'clock.

18 MADAM CHAIR: Yes, and they expect to
19 take one day.

20 Thank you.

21 ---Whereupon the hearing was adjourned at 4:50 p.m., to
22 be reconvened Thursday, April 11, 1991 commencing at
23 9:00 a.m.

